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THE
SALES TAX DIGEST

VOLUME I

1971

THE SALES TAX DIGEST

BY

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PREFACE TO THE FIFTH EDITION

The fourth edition of this book was published in 1965. The increase in the volume of case-law has necessitated the publication of this edition in two volumes.

This edition contains all the usual features found in the previous editions. The Digest has been thoroughly revised and the case-law has been brought up-to-date. In addition, the name of the court to which the decision pertains is also pointed out. Every effort has been made to make the Digest a useful book of reference.

January 15, 1970.

S. V. AIYAR.

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Mad. or M.	...	Indian Law Reports, Madras Series.
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THE SALES TAX DIGEST

ACCOUNT BOOKS

Duty to keep up to date accounts—*“Keeping an account”, meaning of.*—For the purpose of satisfying the requirements of clause (i) of rule 45(1) of the Andhra Pradesh General Sales Tax Rules, 1957, (a) the account must show the value of the goods produced, manufactured, bought and sold by the dealer, (b) it must be true and correct, and (c) it must be kept and maintained in one of the authorised languages. Although rule 64 makes any breach of rule 45 punishable, the person must be guilty of a breach. The word “guilty” imports culpability and a breach of the rule must be blameworthy. If the value of the goods purchased could not be ascertained or if there is a *bona fide* mistake in making the entries or if the accounts could not be kept owing to some accident or misfortune the breach of rule 45(1) would not be punishable. The natural meaning of the words “keep and maintain” in rule 45(1) is that the account should be kept up to date. As the rules do not expressly allow any time for making the entries after the goods are bought, the duty of the dealer is to enter the value of the goods in his account as soon as they are bought. Keeping a purchase bill can by no means be construed as keeping an account as contemplated by rule 45(1). The *mens rea* for the purpose of rule 64 consists in not taking proper care to see that the duties enjoined by the rules concerned are performed.—THE PUBLIC PROSECUTOR, ANDHRA PRADESH *v.* NATAKALA JANAKIRAMA CHETTY AND ANOTHER [1959] 10 S.T.C. 568 (A.P.).

Account books, whether valuable security.—To become “valuable security” within the definition of that term in section 30 of the Indian Penal Code, 1860, the document itself should create the right or liability. Ordinarily speaking, account books do not by themselves create any such right or liability, though they may evidence the existence of such rights or liabilities. An account book, generally speaking, may be valuable evidence but is not “valuable security” within the definition given in section 30. That is not to say that under no circumstances can an account book be considered valuable security. If the books contain entries showing that certain

amounts have been received from customers as sales tax, which would be an acknowledgment by the dealer of his liability to pay over those amounts to the Sales Tax Department, then it can be rightly argued that the books themselves are valuable security.—MOOSA AND OTHERS *v.* STATE OF KERALA [1962] 13 S.T.C. 1022 (Ker.).

Best judgment assessment—*Entries in secret accounts maintained by third party—Power of officer to utilize information—Necessity to give opportunity to assessee to cross-examine third party—Arbitrary addition of 25 per cent. on turnover—Legality.*—The fact that a third party maintaining some secret account books has made some entries in his accounts, which may connect the assessee, by itself will not give jurisdiction to the assessing authority to utilize that information, unless the assessee has been given ample opportunity in the presence of the person who has kept the secret accounts to effectively cross-examine him and elicit the necessary facts as to how exactly the relevant entries came to be made connecting the assessee with such books of account. When the assessing authority is not prepared to act on the materials placed before him in support of the return, there is jurisdiction in him to make an assessment on best judgment basis. But arbitrarily adding 25 per cent. on the turnover of a particular individual cannot be considered to be an assessment made on best judgment basis as that expression is understood in law. If the assessing authority proposes to make an assessment on best judgment basis, there is an obligation on his part to place before the assessee the basis which he proposes to adopt, invite objections from him and consider the objections.—M. APPUKUTTY *v.* THE STATE OF KERALA [1963] 14 S.T.C. 489 (Ker.).

Power of officer to call for accounts.—If a person considers that he has no turnover which is liable to assessment under the Sales Tax Act, he can file a return showing that there is no turnover at all; but the Sales Tax Officer would be competent to call for the account books in order to verify the correctness of the return and to find out whether the turnover is liable to tax or not. Even in a case where a person claims that he cannot be called upon to file a return or to

produce account books on the ground that he has no turnover liable to sales tax, it cannot be said that the Sales Tax Officer is exercising jurisdiction not vested in him if he calls for the production of the account books to satisfy himself that there is no taxable turnover of that person.—*CHANDER BHAN AGARWAL v. SALES TAX OFFICER II, AGRA, AND ANOTHER* [1954] 5 S.T.C. 96 (All.).

Powers of Commercial Tax Officer, Administration—Power to issue summons to produce account books.—The petitioner did not comply with a summons issued by the Commercial Tax Officer, Administration, to produce the account books for the year 1954-55 in March, 1960. The letter accompanying the summons stated that the accounts were called for at the direction of the revising authority to re-examine the claim for exemption duly allowed. The petitioner was convicted under section 174 of the Indian Penal Code. On a revision to the High Court: *Held*, (1) that the offence, if any, committed by the petitioner was one falling under section 175 and not under section 174 of the Indian Penal Code; (2) that under sections 32 and 34 of the Madras General Sales Tax Act, 1959, the Deputy Commissioner and the Board of Revenue alone are empowered to revise the orders passed by the subordinate Commercial Tax Officers, and such power of revision cannot be exercised if more than four years have elapsed after the passing of the order. The Commercial Tax Officer, Administration, has no powers to rectify or revise the orders passed by the Deputy Commercial Tax Officer; (3) that there is no provision in the Act empowering the Commercial Tax Officer, Administration, to summon accounts for a departmental enquiry or to inspect the claims for exemption granted by the assessing authority and making a report to the Deputy Commissioner of Commercial Taxes. There is also no provision in the Act empowering the Deputy Commissioner of Commercial Taxes to delegate his revisional authority to the Commercial Tax Officer, Administration; (4) that in the absence of any evidence to show that the Commercial Tax Officer, Administration, had powers to summon the accounts for the purpose of the Act as contemplated under sections 41(1) and 54, it could not be said that the petitioner was legally bound to produce his account books; (5) that the conviction of the petitioner under section 174 of the Indian Penal Code was therefore not legal.—*VIJAYAM & Co., In re* [1962] 13 S.T.C. 504 (Mad.).

Power to inspect.—The power of the Commissioner, and consequently also of the Assistant Commissioner, to require any person to produce for his inspection the documents referred to in

section 15(1) of the C.P. and Berar Sales Tax Act, 1947, is exercisable only when it is necessary to inspect those documents “for the purposes of this Act”.—*VRAJLAL MANILAL AND Co. v. COMMISSIONER OF SALES TAX, MADHYA PRADESH* [1952] 3 S.T.C. 333 (Nag.).

—Under section 17(2) of the General Sales Tax Act, 1125, the books, godowns etc., of any dealer can be inspected by the competent authorities. Therefore the fact that the officers entered the shop of one dealer in the mistaken belief that it belonged to another cannot make their action illegal.—*MOOSA AND OTHERS v. STATE OF KERALA* [1962] 13 S.T.C. 1022 (Ker.).

Power to enter premises and inspect accounts—Scope of power.—See *OFFENCES infra* under sub-heading, prosecution for obstructing entry and inspection.

Booklets and slips recovered on inspection—Whether belong to assessee.—The question whether the booklets and the slips that were recovered on surprise inspection belonged to the assessee or to some other person is purely a question of fact.—*DEO NARAYAN SINGH ISHWAR NARAYAN SINGH v. STATE OF BIHAR* [1960] 11 S.T.C. 436 (Pat.).

Account books recovered from assessee's place of business.—Whether belong to assessee.—The normal presumption that can be drawn in respect of the records and account books that are found in the business place of an assessee is that they relate to his business and it is up to him to rebut the presumption by satisfying the officer that the records are unconnected with his business. Whether the books recovered from an assessee's place of business related to his business or not is essentially a question of fact. If the Tribunal has given a clear finding on a consideration of all the available materials, that finding is not open to challenge in revision proceedings.—*M. SANKUNNY NAIR v. THE STATE OF KERALA* [1961] 12 S.T.C. 758 (Ker.).

Accounting—Mercantile system—Amount set apart for payment of sales tax—Whether deductible in computing income for income-tax purposes.—The assessee, a dealer in cloth and maintaining mercantile system of accounting, debited in its profit and loss account on 28th August, 1957, the last day of the previous year, a sum of Rs. 27,167 being the estimated sales tax liability under the U.P. Sales Tax (Amendment) Ordinance (9 of 1956) issued on 31st March, 1956, and which was replaced by the U.P. Sales Tax (Amendment) Act, 1956. The validity of the Ordinance was challenged and it was declared to be *ultra vires* by the High Court in *Adarsh Bhandar v. Sales Tax Officer* [1957] (8 S.T.C. 666). Subsequently the

U.P. Sales Tax (Amendment) Act, 1957, was passed on 3rd September, 1957, with the idea of validating the amendments made by the Ordinance; but this was also declared to be *ultra vires* by the High Court in *Firm Bangali Mal Satish Chandra Jain v. Sales Tax Officer, Agra* [1958] (9 S.T.C. 492). After this, the Act was further amended on 6th May, 1958, by the U.P. Sales Tax (Validation) Act (15 of 1958). Against this also, writ petitions were filed but the High Court in *Ram Chand Textiles v. Sales Tax Officer, Hathras* [1964] (15 S.T.C. 340) overruled the decision in *Firm Bangali Mal Satish Chandra's* case [1958] (9 S.T.C. 492). In the meantime the Supreme Court held in *J. K. Jute Mills v. State of U.P.* [1961] (12 S.T.C. 429) that the U.P. Sales Tax (Validation) Act, 1958, was valid and *intra vires*. In computing the assessee's income for income-tax purposes, for the year 1956-57, the officer held that the sum of Rs. 27,167 was not an ascertained liability at the time the debit was made, because the validity of the levy of sales tax was challenged and the matter was before the Supreme Court. On a reference: *Held*, that the amount was deductible as an ascertained liability. *Per* MANCHANDA, J.—The liability to sales tax was a statutory liability which had been incurred and under the mercantile system of accounting the assessee was obliged to debit the expenditure in his accounts. If the estimate of liability was wrong, the department could have substituted its own estimate, but that would not convert the statutory liability into an unascertained liability, particularly as it was admitted that the assessee's accounts were properly maintained. *Per* BEG, J.—A provision of law imposing a statutory liability has to be assumed to be valid and an assessee is entitled to act on such an assumption. The manner in which an assessee acts must be considered by income-tax authorities in determining whether a liability has to be treated as ascertained or contingent. In the instant case, the assessee treated the liability as ascertained and fixed by statute automatically. He was therefore entitled to the deduction.—*DEVI DAS MADHO PRASAD v. COMMISSIONER OF INCOME-TAX, U.P.* [1967] 20 S.T.C. 53 (All.).

Rule 36, whether ultra vires.—As section 26(2) of the Bihar Sales Tax Act, 1944, states that the prescription of specific matters with regard to which rules may be made is without prejudice to the generality of the power given by sub-section (1) to make rules for carrying out the purposes of the Act and as the enactment of rule 36 was essential for carrying out the purposes of the Act, rule 36 was legal and proper.—*BUJHAWAN SAH RAMNATH v. PROVINCE OF BIHAR* [1946] 1 S.T.C. 144.

Rule relating to production of duplicate cash receipts.—Rule 36(1) of the Bihar Sales Tax Rules, 1944, provided: "A dealer who wishes to claim deduction from his gross turnover under sub-clause (i) of clause (a) of sub-section (2) of section 5 of the Act shall produce, in support of such claim, duplicate copies of the relevant cash receipts granted to the purchasers or bills, as the case may be, showing the article sold and the sale price received or receivable by him. Cash receipts or bills of articles declared tax-free under section 6 shall not contain entries of any articles liable to tax and shall bear consecutive serial numbers." The validity and the scope of this rule was considered in the following cases:—

—Rule 36 of the Rules framed under the Bihar Sales Tax Act (VI of 1944) is not *ultra vires* the Bihar Government. Consequently an assessing officer is not wrong in insisting on the production of the particular documents which the rule enjoins upon all dealers to produce in support of the relevant claim.—*BRIJRAJ LAL BIDASARIA v. THE PROVINCE OF BIHAR* [1946] 1 S.T.C. 147.

—Rule 36 of the Rules framed under section 26 of the Bihar Sales Tax Act, 1944, is not *ultra vires*. That rule prescribes what record the dealer has to maintain and to produce as evidence to support a certain claim. It does not preclude the production of other evidence to prove the claim. But the Assessing Officer may not accept such evidence as satisfactory. It is even open to the Assessing Officer to make an assessment without any evidence or even without any return but simply in the exercise of his best judgment. Where an assessee produced his register showing all his transactions the Assessing Officer would be better advised to examine that register and on merits come to a finding as to the volume of business in non-assessable goods.—*RAM PRATAP KAMALIA v. PROVINCE OF BIHAR* [1946] 1 S.T.C. 148.

—Rule 36(1) of the Bihar Sales Tax Rules, 1944, framed by the Bihar Government under section 26 of the Bihar Sales Tax Act, 1944, is not *ultra vires* the Bihar Government and it does not circumvent the operation of sections 6 and 10 of the Act. The provisions of rule 36(1) are mandatory. Rule 36(1) does not make non-taxable goods taxable. It is a mere rule of evidence specifying the nature of the evidence which the Commissioner will require under section 10(2) of the Act in support of a plea that any portion of the gross turnover represents sales of non-taxable goods. It is for the dealer to show that any portion of his gross turnover represents sales of non-taxable goods, and unless and until he does

so, the assessing officer is entitled to treat the total turnover as sales of taxable goods. It is open to the Government to specify under rule 36 the kind of evidence which should be produced in support of such a plea.—*THE PROVINCE OF BIHAR v. JOKHI RAM RAM PRASAD AND ANOTHER* [1948] 1 S.T.C. 202 (Pat.).

Cash memos for petty sales.—The assessee was a petty dealer and he sold controlled goods in small lots. He was led to believe by orders of the Price Control Department that he need not issue cash memos for petty sales. The assessee claimed exemption on account of non-taxable goods but the department took the gross turnover to be the taxable turnover on the ground that cash memos etc., prescribed by rule 36(1) of the Rules framed under the Bihar Sales Tax Act, 1944, were not produced by him: *Held*, that the department was not justified in taking the gross turnover to be the taxable turnover. If there were any transactions in tax-free goods the department had to determine the turnover in those goods.—*RAMASHIS CHOWDHURY v. THE PROVINCE OF BIHAR* [1946] 1 S.T.C. 149.

Cash or credit memo volumes containing entries about sales of taxable and tax-free goods

—*Admissibility in evidence.*—Cash or credit memo volumes containing serially numbered leaves, some of which contain entries about sale of taxable goods while others contain entries about tax-free goods may be admitted as evidence complying with the terms of rule 36(1) of the Rules framed under the Bihar Sales Tax Act, 1944. The rule does not forbid the assessing authority to consider other evidence, and if such other evidence is believed, the assessing authority would be exercising a sound discretion in allowing a claim based thereon. Even where no evidence is called for or return filed, the assessing authority can make the assessment without the evidence or to the best of his judgment. Simply because an assessee has failed to produce the prescribed cash or credit memo in time or has produced memos which do not strictly comply with the terms of rule 36(1), the authority will not be entitled to treat the whole of his gross turnover as taxable without exercising judgment. The exercise of judgment can only mean a consideration of the nature of the assessee's business, any other reliable evidence that he may produce and such other factors as unfamiliarity with the provisions of a new Act, the novelty of the requirement of the issue of separate memos for tax-free and taxable goods though sold to the same customer and paid for at the same time or by the same cheque on the customer's bankers.—*SARJOO LAL RAMACHANDRA LAL v. THE PROVINCE OF BIHAR* [1946] 1 S.T.C. 151.

Condoning of errors or defects.—When as if by accident only a few cases of the sale of taxable goods are mixed with those of non-taxable ones, the assessing officer could condone the error and examine the evidence on merit, ignoring the failure strictly to comply with the rule in view of the fact that the Sales Tax Act is a new measure and exact requirements of the law may not be fully grasped.—*RAM PRATAP KAMALIA v. THE PROVINCE OF BIHAR* [1946] 1 S.T.C. 148.

—If an assessee has got with him duplicates of receipt books and if in any particular respect they are not in strict accordance with the rule that alone may not be taken as sufficient ground for excluding them, considering that the whole sales tax business is new and assessee's are not quite familiar with all its technicalities.—*BRIJRAJ LAL BIDASARIA v. THE PROVINCE OF BIHAR* [1946] 1 S.T.C. 147.

Failure to keep accounts in accordance with rule 36(1)—*Effect.*—Assessee's should not be encouraged in transgressing the rules framed for the purpose of keeping in order the accounts, vouchers, counterfoils and receipts etc. and irregularities in the keeping of accounts may justifiably lead an officer to infer that the books of accounts or relevant documents produced by an assessee are faked and fabricated; but, so long as the officer cannot find adequate reasons for holding that the irregularities complained of have affected the genuineness of the documents produced by the assessee, there is no reason to deprive him of the deductions to which he may be entitled on the face of the accounts. The failure to maintain the accounts or papers as provided by rule 36 may entail a penalty contemplated by the rules themselves, but that is no reason for discarding the accounts altogether. [In the present case although the accounts had not been kept in accordance with rule 36(1), as the officer had not disbelieved them for that reason, the Court directed the taxing authorities to re-examine the accounts carefully and to see to what extent the claim for deduction put forward by the assessee on account of tax-free goods was admissible.]—*KANIRAM JANKI DAS v. THE STATE OF BIHAR* [1952] 3 S.T.C. 230 (Pat.).

Bills—*Conveyance charges included in bills but shown separately.*—Under section 2(h)(i) of the Bombay Sales Tax Act, 1946, "cost of freight or delivery when such cost is separately charged" had to be excluded from the sale price for the purpose of calculating the turnover: *Held*, that it was up to the Collector of Sales Tax and Government under the powers vested in them under the Bombay Sales Tax Act or Bombay

Sales Tax Rules to frame a form of bill which according to them was proper. Where no such form had yet been prescribed and so long as this was not done, the provision should be interpreted in a broad manner. Where the price of bricks and conveyance charges were separately mentioned in the bills, the condition laid by law for purpose of getting the deduction thereof must be taken as satisfied.—*N. C. PALIA AND SONS v. THE STATE OF BOMBAY* [1952] 3 S.T.C. 145 (Bom.).

Best judgment assessment for failure to produce accounts or for producing unreliable accounts.—See BEST JUDGMENT ASSESSMENT.

Prosecution for not maintaining correct accounts.—See OFFENCES.

Accounts, whether include sales invoices.—In *Commissioners of Customs and Excise v. Ingram* ([1948] 1 All E.R. 927) it was held that the word “accounts” in the section embraced *inter alia* sales invoices or copy of sales invoices as well as documents relating to purchases made by the “person concerned”.

Accounts, whether include records.—Rule 9 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, enables the assessing authority to call upon an assessee to produce not only his account books in the ordinary and popular sense but all the records referred to in rule 11 of the Madras General Sales Tax Rules, 1939. CHANDRA REDDY, J., observed as follows:—“Rule 9 enables the assessing authority to call upon the assessee to produce his accounts. Does this mean that the notice to be issued under that rule should be confined only to the account books in the ordinary and popular sense? In this context, rule 11 of the Madras General Sales Tax Rules may be noticed. Accounts maintained by dealers and licensees relating to stocks, deliveries, purchases, output and sales shall be preserved for a period of two years after the close of the year to which they relate. The vouchers of each kind shall be serially numbered separately. No purpose is served by directing the assessee to preserve the things mentioned in that rule for a period of two years if the idea is not to enable the assessing authority to call for them. In our opinion, the department is empowered to call upon the assessee to produce the records referred to in the aforesaid rule. Be that as it may, in this case, relevant contracts, vouchers relating to stocks, pattis etc. could be produced by the appellants at their option in support of their returns. When the Taxing Officer had reason to doubt the genuineness of the accounts and the correctness of the returns he could cast the burden on the assessee to satisfy him in the matter. For this purpose,

the assessee could call in aid the aforementioned records. If they do not choose to rely on them they do so at their peril. They could be made available to the officer to induce him to accept as correct the returns. The department has nothing to lose by the non-production.”—*MADUGULA PAPAYYA AND OTHERS v. PROVINCE OF MADRAS* [1956] 7 S.T.C. 180 (Andh.).

Account books produced before officer not returned to assessee on his request to enable him to file objections—Validity of assessment.—See *DEVJI GOKULDAS v. SALES TAX OFFICER, KOZHIKODE, AND ANOTHER* [1967] 19 S.T.C. 121 (Ker.).

Assessment based on account books seized illegally—Legality.—An assessment order based on documents or account books seized under subsections (2) and (4) of section 41 of the Madras General Sales Tax Act, 1959, which had been declared unconstitutional, is not illegal. It is one thing to say that search and seizure of documents and account books is illegal and it is quite another to say that the documents so seized cannot legally be used as evidence. Whatever means by which the documents have been obtained, their admissibility will depend only on their relevancy and not on the means by which they have been procured. *Kurma v. The Queen* ([1955] A.C. 197) and *Reg. v. Leatham* ([1861] 8 Cox C. C. 498) referred to.—*M. K. ANNAMALAI CHETTIAR AND CO. v. THE DEPUTY COMMERCIAL TAX OFFICER, PERUNDURAI, AND ANOTHER* [1965] 16 S.T.C. 687 (Mad.).

Commission agent—Whether has maintained separate accounts.—“According to the learned Government Pleader, the respondent has not maintained separate accounts of his own dealings and the transactions which he carried on as a commission agent and that therefore he is not entitled to claim exemption under section 8 of the Act. There is no doubt that the respondent has been maintaining separate ledgers in respect of the commission agency business. The chitta that he was maintaining, however, contained both the dealings which he carried on his own behalf as also as a commission agent. The point which falls to be determined is what exactly is the meaning of separate accounts in rule 12(3). The chitta maintained by the respondent shows clearly what transactions relate to his own business and what transactions he carried on as a commission agent. Though it is no doubt written in a single chitta or account book, the transactions are separable and are identifiable. I, therefore, hold that separate accounts are being maintained by the respondent though noted in a single chitta and that he has not in any way violated the provisions of rule 12(3).”—*THE STATE OF ANDHRA v.*

CHODEY JANAKIRAMAYYA AND Co. [1955] 6 S.T.C. 239 (Andh.).

—The requirement as to the maintenance of separate accounts is not violated by the commission agent merely because he does not have two separate account books in respect of his personal business and commission agency business. It is enough if he has maintained separate ledgers. The licence granted to a commission agent under section 8 of the Madras General Sales Tax Act, 1939, enables the licensee to seek exemption from tax in respect of only "such of his transactions as are carried out in accordance with the terms and conditions of his licence", *i.e.*, transactions carried out "for an agreed commission or brokerage on behalf of known principals specified in his accounts" or such transactions "on behalf of principals outside the province". If from the accounts of the dealer it is possible to separate the transactions of the above nature, then he can claim the exemption. The mere fact that there are other transactions in respect of which no such claim could be made or if made could be sustained cannot be a ground for denying him exemption in respect of transactions of this class. In such a case a tabular statement from the accounts showing the extent of the agency business and own business should be prepared.—KONDAPALLI VIRARAJU *v.* THE STATE OF ANDHRA (NOW ANDHRA PRADESH) [1958] 9 S.T.C. 42 (A.P.).

Maintenance of two sets of accounts—Licence to deal in cotton yarn—Discovery of two sets of accounts—Sale at black-market prices—Assessment to tax without cancelling licence—Validity.—THE PROVINCE OF MADRAS *v.* K.R.C.S. BALAKRISHNA CHETTY AND SONS AND Co. [1955] 6 S.T.C. 415 (Mad) affirmed in [1961] 12 S.T.C. 114 (S.C.).

—*Co-operative society holding commission agent's licence—Members selling through society jaggery produced from sugar-cane grown on their own lands at prices higher than fixed under Control Order—Maintenance of two sets of accounts—Society, whether liable to tax for contravening conditions of licence—Whether dealer.*—THE ANAKAPALLE CO-OPERATIVE MARKETING SOCIETY, ANAKAPALLE *v.* THE STATE OF ANDHRA PRADESH [1966] 18 S.T.C. 328 (A.P.).

Notice to produce accounts and prove correctness—Whether two separate notices necessary.—There is no justification for the view that in one and the same notice the dealer should be called upon to produce his accounts and prove the correctness and completeness of his return. The issue of two notices, one for the production of accounts and another to establish the correctness and completeness of his return, is not forbidden by rule 9 of the Madras General Sales Tax (Turnover

and Assessment) Rules. There is sufficient compliance with that rule if two separate notices are served for that purpose.—MADUGULA PAPAYYA AND OTHERS *v.* PROVINCE OF MADRAS [1956] 7 S.T.C. 180 (Andh.).

Rejection of books—Defect in accounts of one quarter—Whether whole year's account liable to be rejected.—Where, in making an assessment under section 12(3) of the Orissa Sales Tax Act, 1947, after rejecting the books of account produced by the assessee, the materials relied on by the assessing authorities were the suppression of certain items from the books of account, habit of the assessee and the volume of the business that he had been carrying on: *Held*, that the assessment was not arbitrary or illegal but was proper. Once an assessee does not comply with all the terms of a notice issued to him under section 12(2) the assessing authorities are competent to proceed under section 12(2)(b). Although quarterly returns are to be submitted under the law, the books of account are to be maintained on annual basis. Therefore even if any defect is found with regard to the accounting in respect of a particular quarter, the accounts for the whole year are liable to be rejected. *Silla Krishna Murty v. Commissioner of Sales Tax, Orissa* [1961] (12 S.T.C. 584) followed.—JAMI BISWANATH PRUSTHY *v.* COMMISSIONER OF SALES TAX, ORISSA [1961] 12 S.T.C. 606 (Ori.).

Rejection of accounts on the sole ground that they are not maintained in accordance with rules—Legality.—The accounts produced by the petitioner, running some restaurants in Mysore State, were rejected by the Commercial Tax Officer on the sole ground that the books and documents were not maintained in accordance with the rules and the petitioner was assessed on the basis of best of judgment. For determining his turnover the officer first ascertained his working expenses and multiplied it by five and in arriving at the working expenses, the officer determined the feeding charges of each one of the servants at Rs. 30 per month. It was found that most of the purchases made by the petitioner were supported by vouchers and most of the sales were supported by bills. The authorities did not find the accounts unreliable: *Held*, (1) that the Commercial Tax Officer acted arbitrarily in rejecting the accounts of the petitioner on the sole ground that the books and documents were not maintained in accordance with Rules. The officer should have considered whether the accounts were otherwise acceptable or not; (2) that the formula adopted by the officer for arriving at the turnover was not arbitrary or capricious. Section 12(3) of the Mysore Sales Tax Act,

1957, bears similarity to the proviso to section 13 read with section 23(4) of the Indian Income-tax Act, 1922. The taxing authorities are the sole judges on the question whether the accounts produced are reliable or not. If they come to the conclusion that the accounts are unreliable and that decision is based on any relevant consideration, then it would not be within the province of the High Court to go into the correctness of their decision. The High Court cannot reopen findings of fact so long as those findings are based on relevant considerations. The High Court ought to safeguard the citizens against arbitrary decisions of quasi-judicial bodies. The larger the powers entrusted to an individual or a tribunal, the greater should be the circumspection.—**RANGAPPA PANDURANG KAMATH v. STATE OF MYSORE** [1962] 13 S.T.C. 714 (Mys.).

Rejection—Right to make best judgment assessment—Whether accounts are unreliable—Question of fact or law—Principles stated.—There is no burden on the assessing authorities to prove by positive evidence that the account books produced by an assessee are unreliable. Further the conclusion of the authorities that the account books are unreliable is a conclusion of fact. Therefore even if the account books are regularly maintained and no flaw can be discovered in those books, the assessing authorities are not bound to accept them if they are found to be otherwise unreliable. The question whether the turnover returned by the assessee should be accepted by the assessing authority is a question of fact. When the returns and the books of account are rejected, the assessing officer must make an estimate and to that extent he must make a guess; but the estimate must be related to some evidence or material and it must be something more than mere suspicion. He must make what he honestly believes to be a fair estimate of the proper figure of assessment and for this purpose he must take into consideration such materials as the assessing officer has before him, including the assessee's circumstances, knowledge of previous returns and all other matters which the assessing officer thinks will assist him in arriving at a fair and proper estimate. The Sales Tax Officer was not satisfied with the returns submitted by an assessee and required him to produce his account books. In compliance with this requirement, the assessee produced the books which were found to be unreliable: **Held**, that there was no compliance with section 11(4)(a) of the C.P. and Berar Sales Tax Act, 1947, and the Sales Tax Officer was entitled to make a best judgment assessment.—**MOHANLAL VISHRAM v. COMMISSIONER OF SALES TAX** [1964] 15 S.T.C. 331 (M.P.).

—Estimation of profits—Principles applicable.—Under section 12(2)(b) of the Mysore Sales Tax Act, 1948, the power to substitute his own turnover for that declared by a dealer becomes available to the assessing authority only if he is of opinion that the return submitted by the dealer is incorrect or incomplete. In such a case, the estimate of the turnover of the dealer has to be made in the following way:—(i) The dealer must be afforded an opportunity to prove the correctness of his return; (ii) If the correctness of the return is not established, an enquiry must precede the estimate; (iii) The estimate must rest upon some material; (iv) The material on which the estimate is founded should be disclosed, to the extent permissible, to the dealer; (v) The estimate must be a just and honest estimate. The principles applicable to the estimation of a turnover under section 12(2)(b) are substantially the same as those applicable to an assessment under section 23(4) of the Indian Income-tax Act, 1922, although while in one case an enquiry is imperative, in the other it is not. It is implicit in the power given to the assessing authority to estimate a turnover to the best of his judgment, that no formula incorporating any rigid or inflexible rule can be substituted for his judgment. For the purpose of making the estimate, the assessing authority must make his own mind think about it. He should, after considering the facts and circumstances of each case and the materials gathered by him, estimate the turnover as nearly as it can be done. If that is what he has to do, an estimate on the basis of a formula evolved by someone else would not be his estimate or one to the best of his judgment, although a formula that the turnover of a hotel-keeper is nearly always five times the working expenses may be a good working rule generally. It would be for the assessing authority to consider whether that rule if applied to the case before him is likely to yield a just and proper result and to refuse to apply it if he thinks it does not. It would be equally open to the dealer to demonstrate that that working rule, which might normally be considered to be a satisfactory basis, causes hardship to him and should therefore be discarded. No rule, not even a rule which experience has proved to be a good general working rule, can have universal application so as to exclude an estimate except by its application. A general working rule although founded on experience or practical knowledge cannot have the status of a rule of law and does not dispense with the duty to consider in each case whether that rule is a suitable expedient or method for ascertaining the turnover in that case. Although recourse to a flat rate or a rule

of averages or any other similar general working rule is on principle unexceptionable, what is open to criticism is the mechanical application of any one of those methods without the examination of its suitability to the case in which it is to be employed even if it has been found to be an efficacious expedient in the case of another dealer carrying on a similar business or trade. The true rule is that the ascertainment of the turnover should in each case be made by the adoption of that method which in the opinion of the assessing authority will assist a just and substantially accurate estimate in that case. It is for him to select that method there being no rule of law as to a proper way of making an estimate. There is in rule 19 of the Rules made under the Mysore Sales Tax Act, 1948, an unmistakable indication that no estimate can be made under section 12(2)(b) merely on the basis of a general working rule formulated in other proceedings. That rule requires the assessing authority in all cases in which he does not accept a declared turnover but substitutes his own turnover for it, to assign reasons for such substitution. The requirement that the assessing authority should assign reasons for such substitution by necessary implication excludes the possibility of the substitution of a turnover by the mechanical adoption of a formula or a ratio employed in some other case. The Deputy Commissioner estimated the turnover of the petitioner, a hotel proprietor, at five times his working expenses by merely adopting a ratio which, according to the Tribunal, existed between working expenses and the turnover in certain other cases. The figures in these other cases were not disclosed to the petitioner and he was not asked why that ratio should not be applied to his case. The Deputy Commissioner regarded the decision of the Tribunal in the other cases as a mandate that in the case of all hotel-keepers the turnover had to be estimated by the application of that ratio: *Held*, that it was not legitimate for the Deputy Commissioner to make the estimate in that way. It was for him to consider whether the application of that ratio was the best way of making the assessment in the petitioner's case and before doing so, it was necessary for him to ascertain from the petitioner why that particular method should not be adopted. Where the Deputy Commissioner found that the accounts of the petitioner's hotel were above reproach and correctly maintained, it was impossible for him to make an estimate of the turnover in contradiction of his own finding, and therefore the taxable turnover of the petitioner should be taken as that declared in the return of turnover. The Commercial Tax Officer

found that in the accounts of another hotel of the petitioner every item of sale was entered but they did not contain an accurate record of the purchases. He therefore rejected the accounts and made an estimate: *Held*, that the turnover of the petitioner was the aggregate of the sales in the hotel and if everyone of those sales was recorded in the accounts, it was immaterial that some purchases not forming part of his taxable turnover, had not been accurately recorded in the accounts. Therefore the turnover declared by the petitioner was his real turnover.—*P. NARAYANAPPA v. THE STATE OF MYSORE* [1962] 13 S.T.C. 993 (Mys.).

—**Omission of purchases in account books—***Books whether can be rejected.*—See *BHAGWAN DASS SUD & SONS v. FINANCIAL COMMISSIONER* [1960] 11 S.T.C. 431 (Punj.) under **BEST JUDGMENT ASSESSMENT**.

—**Suppression of several items of transactions—***Rejection of books and assessment to best of judgment—Legality.*—See *SILLA KRISHNA MURTY v. COMMISSIONER OF SALES TAX* [1961] 12 S.T.C. 584 (Ori.) and *JAMI BISWANATH PRUSTHY v. COMMISSIONER OF SALES TAX* [1961] 12 S.T.C. 606 (Ori.).

Seizure of account books—Assessment proceedings—Failure to submit return—Seizure of account books and best judgment assessment on basis of seized books—Prosecution for not submitting return—Acquittal for not proving beyond reasonable doubt connection of accused with accounts—Whether finding of Criminal Court binding on department and Tribunal—Whether precludes them from arriving at independent conclusion.—See *MACHERLAPPA AND SONS v. GOVERNMENT OF ANDHRA (NOW ANDHRA PRADESH)* [1958] 9 S.T.C. 156 (A.P.).

—**Taking possession of account books—When amounts to seizure.**—Seizure means taking possession contrary to the wishes of the owner of the property. Some officers of the Sales Tax Department entered the shop of a dealer and demanded his account books for inspection. The dealer replied that the books were not available in the shop. In the meanwhile the officers noticing an open bag with the account books kept in another room entered the room, brought out the bag and began to examine the books. The dealer did not then make any protest either by word or deed: *Held*, that the taking possession of the books by the officers in such circumstances did not amount to a seizure.—*MOOSA AND OTHERS v. THE STATE OF KERALA* [1962] 13 S.T.C. 1022 (Ker.).

—**Information that dealer is manipulating accounts—Whether sufficient for action under**

section 14(3).—Although no tax was due from a dealer, the information that the dealer was manipulating the account books in such a way as to result in evading payment of sales tax was sufficient ground to enable the authorities to take steps under section 14(3) of the Delhi Act.—**ROSHAN LAL v. COMMISSIONER OF SALES TAX** [1959] 10 S.T.C. 318 (Punj.).

Power of Commissioner to seize accounts—
Delegation to Sales Tax Officer and seizure by officer after obtaining sanction of Commissioner—Whether proper.—Where the power to seize account books vested in the Commissioner under section 14(3) of the Bengal Finance (Sales Tax) Act, 1941, as extended to Delhi, was delegated by a notification to the Sales Tax Officer subject to the previous approval of the Assistant Commissioner, the delegation was valid under section 15 of the Act. The fact that the Sales Tax Officer seizing the account books had obtained the approval of the Commissioner and not of the Assistant Commissioner did not affect the merits of the case.—**ROSHAN LAL v. COMMISSIONER OF SALES TAX AND ANOTHER** [1959] 10 S.T.C. 318 (Punj.).

Retention of books for more than 21 days.—Rule 58 of the Delhi Sales Tax Rules, 1951, provided that documents could be retained for more than 21 days only if the Commissioner sanctioned such retention. The sanction of the Commissioner for the retention of books seized on 5th July, 1958, was obtained only on 30th July, 1958: *Held*, that whether the retention of the books for four days was illegal or not, that was no ground for interference with the order in a petition under Article 226 of the Constitution of India.—**ROSHAN LAL v. COMMISSIONER OF SALES TAX** [1959] 10 S.T.C. 318 (Punj.).

Duty to issue receipt and to return books within a period of ninety days.—Under subsection (5) of section 13 of the U.P. Sales Tax Act, 1948, the officer seizing the account books has to grant a receipt for the same forthwith. A request for the grant of a receipt by the persons from whose custody the account books are seized is not necessary. It is a duty cast upon the officer himself and he has to act *suo motu* in the matter. Under section 13 when the books of account of a dealer are seized there is no warrant for recording the statement of any person. The officer cannot retain the books after the expiry of 90 days from the date of seizure. He has to act *suo motu* in returning the books to the person from whose custody they were seized within a period of 90 days. The petitioner was a munim whose business was to

write the books of account of several businessmen. The petitioner brought to his house the books of his clients and returned the books to them after the same had been written up. The Sales Tax Officer, along with an Income-tax Officer, an Income-tax Inspector and 4 peons, raided the residence of the petitioner, seized the account books of different parties and brought not only the books but also the petitioner to his office. The officer did not issue any receipt for the books seized by him and in spite of repeated requests and the expiry of 90 days, did not return the books to the petitioner. On a petition filed under Article 226 of the Constitution: *Held*, that the action of the officer was without justification.—**SHRI SHAMBHU NATH v. SALES TAX OFFICER, JAUNPUR** [1962] 13 S.T.C. 211 (All.).

Assault on officer while seeking to search—
Nature of offences.—See under OFFENCE.

Seizure of accounts and other documents—
Scope of power vested in officers.—See under OFFENCE.

Discovery of suppression for portion of year—
Estimation for whole year based on suppression—
Legality.—See **G. NARASIMULU v. STATE OF ANDHRA PRADESH** [1962] 13 S.T.C. 502 (A.P.) under BEST JUDGMENT ASSESSMENT.

Separate accounts—Goods taxable at different rates and stages—Maintenance of separate accounts.—The assessee, a dealer in bullion and jewellery, sold bullion purchased both from dealers and persons other than dealers. The total sales turnover of bullion came to Rs. 5,63,000 out of which the assessee claimed that a turnover of Rs. 3,80,918 representing sales of bullion purchased from dealers, was exempt from tax as second sales inasmuch as a presumption should be raised in his favour that the entire quantity covered by second sales was included in the sales turnover of Rs. 5,63,000. The assessee did not maintain a separate account of the gold sold from out of the stocks obtained from dealers or licensees. The claim of the assessee was rejected by the Tribunal but it was held by the High Court that although the assessee had not maintained a separate account, such an account would be only a make-believe one. What the law required was that there should be no escape of tax. As the quantity of bullion sold by the assessee exceeded the quantity purchased from other dealers, the natural presumption arose that a person engaged in a transaction would presumably follow that course which took him out of the taxable category rather than otherwise.

Therefore the turnover of Rs. 3,80,918 should, under the law, be deemed to relate to the quantity of gold which the assessee had purchased from other dealers and it was exempt from tax as turnover representing second sales of bullion.—*S. RATHINASWAMY CHETTIAR v. THE STATE OF MADRAS* [1962] 13 S.T.C. 419 (Mad.).

—In view of sections 10 and 40 of the Madras General Sales Tax Act, 1959, and rule 26(1), (2) and (9) of the Madras General Sales Tax Rules, 1959, the decision of the Madras High Court in *S. Rathinaswamy Chettiar v. The State of Madras* [1962] (13 S.T.C. 419), which was given under the Madras General Sales Tax Act, 1939, requires to be reconsidered.—*THE STATE OF MADRAS v. V. P. S. A. NARAYANA NADAR & CO.* [1968] 21 S.T.C. 25 (Supreme Court).

ACTIONABLE CLAIM

(See also SALE)

Delivery order—*Whether actionable claim or document of title.*—A delivery order is recognised as a document of title. Where the manufacturers gave the delivery order to a party for valuable consideration and this delivery order was subsequently sold in succession for valuable consideration to different parties, the valuable consideration in each transaction was for property in the goods and not for a beneficial right. The manufacturers would have no property at all in the goods after they had issued the delivery order for valuable consideration. Their position would be that of a bailee for the real owner.—*HASTINGS MILL LTD. v. STATE OF WEST BENGAL* [1956] 7 S.T.C. 503.

ADJOURNMENT

Notices of adjournment—*Whether authorities bound to send.*—The Sales Tax Authorities have no duty cast upon them to send notices to any address other than the registered address. In law there is no duty on them to send any notices of adjournment at all. There is no legal liability on behalf of the authorities to carry on any correspondence, or to inform an assessee of adjournments, by issuing notices and then serving them. The initial notice being served, it is the duty of the assessee to be present at the hearing before the authority at the time specified for hearing, and to note if any orders of adjournments are made. It is entirely out of grace that notices are served upon the assessee intimating to him the fact of adjournments.—*NAGENDRA NATH SHAH v. THE STATE OF WEST BENGAL AND OTHERS* [1957] 8 S.T.C. 641 (Cal.).

ADVANCE PAYMENT OF TAX

Rules providing for advance payment of tax—*Whether ultra vires.*—The provisions in the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, relating to advance provisional assessment and levy are inconsistent with the provisions of the Madras General Sales Tax Act, 1939, and are therefore *ultra vires* the State Government. *Syed Mohamed and Co. v. The State of Madras* [1952] (3 S.T.C. 367; (1952) 2 M.L.J. 598) distinguished. *RAJAMANNAR, C.J.*, said as follows:—"So it becomes necessary to decide whether rules 6 to 11 are in any way inconsistent with any of the provisions of the Act. The learned Advocate-General laid considerable stress on the language in section 3(5) of the Act, which he said was wide enough to permit a rule being made to assess, levy and collect the tax in any manner, so long as it was the total turnover that was finally treated as being liable to tax. While I agree that once the tax has accrued in accordance with the charging section, the rules can provide for the assessment, levy and collection of the tax in such manner as the Government may consider proper and expedient, I fail to see how when the charging section says that every dealer shall pay for a financial year sales tax on his *total* turnover for such year, he can be asked to pay before the year has elapsed and therefore the total turnover cannot be ascertained, a provisional tax calculated on an estimated turnover. I quite realise that the Legislature might have made such a provision in the Act itself. An apposite analogy is furnished by section 18-A of the Indian Income-tax Act. But in the absence of any such provision in the Act itself, a rule cannot go beyond the Act and make the dealer pay a tax provisionally calculated on an estimated turnover. The objection is not met by reference to the provision in the rules for final adjustment. Nor are we concerned with the convenience of the parties, that is, the assessee and the Government. Here we have a penal provision in section 15, and the Sales Tax Act is a fiscal enactment. It is well established that in such cases the Courts will strictly construe the material provisions to determine whether an undoubted liability is cast on the subject, for failure to discharge which he could be made to suffer a penalty."—*M. P. KUMARASWAMI RAJA, In re* [1955] 6 S.T.C. 113 (Mad.).

—In *Syed Mohamed and Co. v. State of Madras* [1952] (3 S.T.C. 367) the same question was considered, but the learned Judges in *M. P. Kumaraswami Raja, In re* [1955] (6 S.T.C. 113) distinguished that decision. The observations in

Syed Mohamed and Co.'s case which deal with this question are as follows:—"It is also contended that it is wrong on principle that a tax should be levied before it is finally determined; that under section 3(2) of the Act the assessment should be only on the annual turnover and that, therefore, rule 15(2) which provides for advance payments of tax every month before the liability to pay arises, which is only when the goods are actually tanned or exported is unconstitutional and that the position is not altered by rule 15(5) which provides for deduction of the amounts which turn out in the events not to have been payable in the returns for subsequent months. But advance payment of tax is a well-recognised feature in the mode of realising tax and the provision in rule 15(2) is in accordance with the practice generally obtaining in this branch of the law.....The attack on rule 15(2) must accordingly fail".—V. M. SYED MOHAMED & Co., AND ANOTHER *v.* THE STATE OF MADRAS AND ANOTHER [1952] 3 S.T.C. 367 (Mad.).

—Considering the scheme of the Travancore-Cochin General Sales Tax Act, 1125, which is quite unlike the scheme of the Indian Income-tax Act, 1922, there is nothing in section 3(1)(a) of the Sales Tax Act which renders a provisional assessment on an estimated turnover subject to a final assessment and adjustment on the basis of the final assessment illegal or contrary to the spirit of the Act. Such provisional assessments appear to have been contemplated by the Legislature and are in keeping with the spirit of the charging section. Therefore rules 9 to 11 of the Travancore-Cochin General Sales Tax Rules do not offend or contravene section 3 of the Act and are not *ultra vires* of that section or of the powers of the Government. Rules 10 and 11 have to be treated as valid and integral parts of the Sales Tax Act. When the validity of a particular rule made under a provision in the Act, which says that the rules made thereunder shall have effect as if enacted in the Act, is challenged if the Court decides that the particular rule is valid that rule will have to be treated as part of the Act. Where the challenge is in effect about the validity of a provision which has to be treated as part of the Act, on account of section 432(1) of the Criminal Procedure Code a subordinate criminal court is incompetent to pronounce the rule to be invalid or inoperative until the Supreme Court or the High Court to which that Court is subordinate has declared it to be so. *M. P. Kumaraswami Raja, In re* [1955] (6 S.T.C. 113; A.I.R. 1955 Mad. 326) dissented from. *V. M. Syed Mohamed & Co. v. State of Madras* [1952] (3 S.T.C. 367; (1952) 2 M.L.J. 598; A.I.R. 1953 Mad.

105) relied on.—S. HAMSA KOYA, *In re* [1957] 8 S.T.C. 18 (Trav.-Co.).

Section providing for provisional assessment and advance payment of tax—Validity.—Section 3(1A) of the Madras General Sales Tax Act, 1939, introduced by the Amending Act VIII of 1955, which provides for provisional assessment and collection of tax in advance in monthly or quarterly instalments, is not unconstitutional. The provisions of that section and the rules relating to provisional assessment are clearly within the legislative power of the State as providing the machinery for ensuring proper collection of the tax due under entry 54 of the State List. It is not correct to say that the tax collected in such a case is a tax on an anticipated sale. It is merely machinery employed for securing to the State the tax due and payable to it. Every legislative power carries with it authority to legislate in relation to acts, matters and things the control of which is found necessary to effectuate its main purpose and thus carries with it power to make laws governing or affecting many matters that are incidental or ancillary to the subject-matter. If a tax liability is certain to arise, a provision designed to ensure that this shall not be evaded is clearly within the power to enact a law with respect to taxes on the sale of goods.—*RAMRAJ TOBACCO TRADING COMPANY v. THE ASSISTANT COMMERCIAL TAX OFFICER, ATTUR AND OTHERS* [1957] 8 S.T.C. 127 (Mad.).

ADVERTISING FIRM

Liability to sales tax.—The appellants were an advertising firm. They received orders for the advertisements of their clients in newspapers and other journals and where a picture was to appear in any advertisement they had to entrust the work of making the blocks to a different firm, to which they gave orders for the blocks required, giving particulars of their kind and size and also giving the names of the clients. They left the details of the bill to be submitted blank, which, after being filled in by the block-making firm, was returned to the appellants wherein the charge was shown less discount 15%. They received a similar discount from the newspaper and other journals and recovered the amounts of the bills, without showing the discounts received by them, from their clients. Prior to entering into the contracts, the appellants informed their clients the rates charged by the newspapers and the clients approved the estimate and authorised the appellants to contract and release advertisements on their behalf. The Sales Tax Authorities held that the blocks were actually purchased by

the appellants and again sold to their clients and that on such sales the sales tax could legitimately be charged: *Held*, that the appellants were the agents of their clients for getting the advertisements printed, and as the clients' names were clearly disclosed in the order given by the appellants to the block-makers, the contract with the block-makers would not be a contract falling within any of the classes mentioned in the second paragraph of section 230 of the Indian Contract Act, 1872, and the appellants would not be personally bound by the contract as regards block-making. It could not therefore be said that there was a sale of the blocks by the appellants to their clients.—*SISTA'S LIMITED v. THE STATE OF BOMBAY* [1956] 7 S.T.C. 343. On a reference to the High Court under section 34 of the Bombay Sales Tax Act, 1953, see below :—

—Under the Bombay Sales Tax Act, 1953, a person in order to become a dealer must carry on the business of selling or buying goods in the State of Bombay. Whether that business is carried on on his behalf or as a commission agent for another is immaterial for the purpose of the definition. The assessee, an advertising firm, entered into contracts with advertisers who desired to advertise their goods in newspapers. The assessee then entered into contracts with newspapers on behalf of the advertisers. The assessee prepared lay-outs and designs and also got blocks prepared from block-makers by placing orders on behalf of the advertisers with the block-makers on printed forms of the assessee showing the names of the advertisers on whose behalf the orders were placed. The assessee rendered to the block-makers various services and technical assistance for which the block-makers gave them remuneration at the rate of 15 per cent. on the amounts billed by the block-makers. The assessee billed the advertisers for preparing the lay-outs and designs and also for the amount which they had to pay to the block-makers and engraving studios for preparing the blocks. The Collector held that the assessee was carrying on the business of buying and selling blocks and other advertising materials and were therefore dealers within the meaning of section 2(6) of the Bombay Sales Tax Act, 1953. On appeal the Sales Tax Tribunal held that the assessee was merely agents of the advertisers and not purchasers of the blocks and they were therefore not dealers. On a reference under section 34: *Held*, on a consideration of the contracts and other documents in the case, that the assessee was not purchasers of the blocks for the purpose of carrying on their business but were merely agents of the advertisers and they therefore did

not come within the definition of "dealer" in the Act; *Held further*, that the assessee was also not commission agents buying goods on behalf of the advertisers. *Sista's Limited v. The State of Bombay* [1956] (7 S.T.C. 343) affirmed.—*THE STATE OF BOMBAY v. SISTA'S LTD.* [1957] 8 S.T.C. 593 (Bom.).

Advertising agents—Preparation of designs in consultation with customers and entrusting designs to block-makers for making blocks—Art and translation charges shown separately in bills—Liability to sales tax.—The assessee, a firm of advertising agents, prepared, in consultation with the customers, the drawings or photographs and their art department prepared the designs for advertisements. After approval of a design by the customer, it was entrusted to the block-makers for making of block. The assessee charged in the bills supplied to their customers an item under "art charges and translation charges" separately from the amount due for the actual making of the block together with 15 per cent. commission thereon. The Tribunal excluded the amount representing "art charges and translation charges" from the assessee's taxable turnover. On a revision: *Held*, that the circumstances clearly made out a contract for art and translation charges distinct from the contract for the sale of the block, and therefore the Tribunal was correct in excluding the charges made for the former service from the assessable turnover. *T. V. S. Sarma Studio v. The State of Madras* [1963] (14 S.T.C. 784) referred to.—*THE STATE OF MADRAS v. BOMAS LIMITED* [1965] 16 S.T.C. 819 (Mad.).

ADVOCATES

Appearance on behalf of assessee—Advocate and sales tax practitioners—Authority to attend—Whether includes authority to appear and plead—Advocate's right to practise includes right to appear, plead and act—Form prescribed under Bombay Act—Whether any other term of engagement can be included in that form—Authorisation, mukhtyarnama or vakalatnama—Proper stamp to be affixed.—An authority given by an assessee authorising an Advocate to attend on his behalf before the Sales Tax Authorities under the Bombay Sales Tax Act, 1959, must include a right to appear, plead and act on behalf of the assessee, because the Advocates Act, 1961, gives the Advocate concerned the right to practise before such authority. Persons, other than a legal practitioner or an Advocate, authorised by an assessee to attend under the Bombay Sales Tax Act, 1959, have a right to appear and plead on behalf of such assessee but not to act unless the authorisation also specifically includes the authority to act. Therefore an

authorisation to be given by an assessee in proceedings under the Bombay Sales Tax Act, 1959, can either be an authority to attend, which must imply a right to appear and plead, or it may in addition include an authority to act, which, however, is dependent on the individual terms of agreement or engagement between the parties. The form prescribed under section 71 of the Act is only indicative of the nature of the agreement which must subsist between the parties who authorise anybody to appear on behalf of an assessee. But neither the section nor the rules imply a further power of the rule-making authority, or for the matter of that, any officer of the department to insist that no other term of the contract of engagement shall form part of the document which evidences the contract. Therefore no objection could be raised by any authority to inclusion of other terms of engagement between the assessee and the authorised person concerned, merely because a form has been prescribed under the Bombay Sales Tax Rules, 1959. An authorisation under the Sales Tax Act, a mukhtyarnama or a vakalatnama is a power-of-attorney under the Bombay Stamp Act and the Bombay Court-fees Act. The authorities under the Sales Tax Act, such as the Sales Tax Officer or the Commissioner of Sales Tax and persons appointed to assist him, are executive officers and therefore a power-of-attorney, a mukhtyarnama or a vakalatnama filed in a case before any of them is not required to bear a non-judicial stamp of Rs. 3.30 under the Bombay Stamp Act, but shall bear court-fee stamp of Rs. 2 as provided in item 12 of the Second Schedule to the Bombay Court-fees Act.—**L. M. MAHURKAR AND ANOTHER v. SALES TAX OFFICER, CIRCLE II, NAGPUR, AND OTHERS** [1967] 20 S.T.C. 199. (Bom.).

AGENT

(See also COMMISSION AGENT)

Contract of sale or contract of agency—Question of law or fact—Distinction—Principles stated.—The question as to whether the transactions in any given case are sales or contracts of agency is a mixed question of fact and law and must be investigated with reference to the material which the dealer might be able to place before the appropriate authority. The question is not one which can properly be determined in an application for a writ under Article 226 of the Constitution. As a matter of law there is a distinction between a contract of sale and a contract of agency by which the agent is authorised to sell or buy on behalf of the principal and make over either the sale proceeds or the goods to

the principal. The essence of a contract of sale is the transfer of title to the goods for a price paid or promised to be paid. The transferee in such a case is liable to the transferor as a debtor for the price to be paid and not as agent for the proceeds of the sale. The essence of agency to sell is the delivery of the goods to a person who is to sell them, not as his own property but as the property of the principal who continues to be the owner of the goods and will therefore be liable to account for the sale proceeds. The true relationship of the parties in each case has to be gathered from the nature of the contract, its terms and conditions, and the terminology used by the parties is not decisive of the legal relationship.—**SRI TIRUMALA VENKATESWARA TIMBER AND BAMBOO FIRM v. COMMERCIAL TAX OFFICER, RAJAHMUNDY** [1968] 21 S.T.C. 312 (Supreme Court).

Manufacturers of bidis—Despatch to merchants under agreements—Whether agreements create relation of agent and principal.—The assessee engaged in the manufacture and sale of bidis in and outside the State of Madhya Pradesh, despatched bidis to merchants at diverse places in India. Each merchant, to whom bidis were despatched, executed an agreement in the form of a letter addressed to the assessee, a sample form of which was as follows:—“(1) You will have to meet my demand of bidis in my area. (2) You will have to give delivery of bidis at Manmad station. (3) I will sell your bidis at the rate fixed by you adding to it the expenses incurred. (4) Money towards goods will be remitted to you as sales are effected or sometimes remittance will be made in advance. (5) After the goods are delivered, I shall be responsible for the damages or risk at my place or in transit. (6) I shall take from you, in lieu of my labour, Rs. 3-3-0 as commission per pitara. (7) You will have the right to increase or reduce the rate of bidis. (8) On the goods remaining in stock when the rate is increased or decreased, necessary adjustment of accounts will be made. (9) If I were to be acting in contravention of these conditions, you will have the right to cancel my agency. You will have the right to make arrangements for the sale of your bidis as you think best.” The High Court held that the transactions between the parties amounted to sales: On appeal to the Supreme Court: *Held*, that the clauses in the agreement only created a relationship of principals and agent and not of vendors and purchaser.—**HAFIZ DIN MOHAMMAD HAJI ABDULLA v. THE STATE OF MAHARASHTRA** [1962] 13 S.T.C. 292 (Supreme Court).

Sale or agency—Contract between company and authorities—Subsequent appointment of middleman

—*Transaction between middleman and company.*—A company supplying cement to the Hirakud Dam Project Authorities entered into an agreement with them for the purchase of their second-hand serviceable gunny bags at a certain rate so that fresh cement might be supplied in those bags also. The petitioner, a businessman, was later engaged as a “middleman” by the company to purchase those bags from the project authorities and to deliver them at the company’s premises. The company also informed the project authorities that the petitioner was appointed its agent for collecting the bags and requested them to afford him all facilities. It was agreed between the petitioner and the company that in addition to the contract price of Rs. 25 per hundred bags, the petitioner should be paid an additional sum of Rs. 7 per hundred bags to cover all kinds of expenses, including commission. The petitioner was required to take delivery of the bags from the project authorities after paying the price fixed, transport them by rail and deliver them to the company. The agreement provided that the gunny bags after arrival at the company’s premises would be sorted out and scrutinised and that only those bags which the works manager of the company considered to be serviceable would be accepted by the company and the rest would be rejected. The agreement further provided that the rejected gunny bags should be removed by the petitioner within two months from the premises of the company, where they would remain at the petitioner’s risk until such removal, and after expiry of two months there could be no claim against the company in respect of such bags. The petitioner contended that he was only an agent of the company for the purchase of the bags, that there was no sale between him and the company and that therefore he was not liable to pay sales tax in respect of the transaction of delivery of gunny bags to the company : *Held*, that, in the circumstances of the case, the petitioner was a “dealer” within the meaning of section 2(c) of the Orissa Sales Tax Act, 1947, and that the supplies of gunny bags to the company amounted to “sales” attracting liability to tax under the Orissa Sales Tax Act, 1947. *Commissioner of Sales Tax v. Hussein Ali* [1959] (10 S.T.C. 297) relied on. *Cassaboglou v. Gibb* (1883) 11 Q.B.D. 797 referred to.—*SREELAL AGARWALLA v. THE STATE OF ORISSA AND ANOTHER* [1962] 13 S.T.C. 446 (Ori.).

Contracts of sale with exporting firms—
Whether exporting firms act as agents of assessee.—See *M. M. MOHIDEEN THUMBY & Co. v. THE STATE OF MADRAS* [1962] 13 S.T.C. 805 (Mad.) under **IMPORT AND EXPORT.**

Sale by agent, a licensed dealer—Principals not licensed dealers—Whether agent can be assessed to tax.—The assessee, a licensed dealer in hides and skins, was assessed to sales tax on a certain sum representing the turnover in respect of the sales of hides and skins belonging to principals not resident within the State of Madras. The assessee contended that as the principals were not licensed dealers and as rule 16(4) made only transactions of licensed dealers taxable, the principals could not be taxed and therefore the assessee as agent of unlicensed dealers also could not be taxed : *Held*, that as a result of the fiction enacted by section 14-A(1), the primary liability in law was laid on the agent, and therefore the assessee, being a licensed dealer, could be assessed to tax even though the principal, the non-resident dealer, could not have been taxed direct.—*UNION LEATHER COMPANY v. STATE OF MADRAS* [1960] 11 S.T.C. 318 (Mad.).

Agent selling agricultural produce entrusted to him for sale by agriculturist—Turnover of agent—Whether exempt.—Under the Madras General Sales Tax Act, 1959, an agent with dominion over the goods of the principal and with authority to transfer the property in such goods and consequently effect sales and acquire a turnover in respect of such transactions, cannot be treated on the same footing as the agent of a non-resident principal assessed under section 14-A of the Madras General Sales Tax Act, 1939. The turnover acquired by the agent in such circumstances is in law as well as in fact his own turnover for the purposes of sales tax assessment, and it cannot be considered as the principal’s turnover. Where the turnover is that of the agent himself under the statutory definition of “dealer” given in the 1959 Act, the exemption under the proviso to section 2(r) can be granted only if the agricultural produce is grown by the agent himself or grown on a land in which he has an interest, whether as owner etc. As long as the produce does not satisfy this condition, the benefit of the proviso will not be available to the agent. Where only the principal himself is an agriculturist selling the surplus produce and is therefore not a dealer engaged in the business of selling goods the proviso to section 2(r) will not apply in any event to the transactions of the agent on behalf of such principal.—*THE STATE OF MADRAS v. TIRUCHENGODE CO-OPERATIVE MARKETING SOCIETY LTD.* [1965] 16 S.T.C. 760 (Mad.).

Agent residing inside State signing contracts, taking delivery of goods and making payments of

money—Liability to tax.—See SRIRAM VENKATASUBBARAO & SON v. STATE OF ANDHRA PRADESH [1960] 11 S.T.C. 646 (A.P.) under INTER-STATE SALES.

Composite assessment as dealer and as agent of non-resident—Separate notices whether necessary.—See RAMDAYAL GHASIRAM v. GOVERNMENT OF ANDHRA PRADESH [1960] 11 S.T.C. 705 (A.P.) under DEALER.

Agent of non-resident—Nature of liability under section 14-A.—According to the scheme of section 14-A of the Madras General Sales Tax Act, 1939, a person living outside the State but carrying on the business of buying or selling goods in the State cannot escape liability of payment of tax by reason of his non-residence. In respect of his transactions in the State his agent residing in the State will be liable to pay the tax but the agent has a right *inter alia* to retain a sum equal to that amount out of the moneys payable to the principal, who is entitled to the benefit of section 3(3) and can take advantage of the same only if he adopts the procedure prescribed. Section 14-A does not expressly use the term “dealer” in relation to a person residing outside the State and says only that he should be a person carrying on the business of buying or selling in the State. As regards his agent, the deeming provision in the section implies that though the agent does not come within the definition of dealer, he will be regarded as such with all the attendant consequences by reason of the legal fiction. The only condition attached to the application of this fiction is that he should be the agent concerned with such business and residing in the State. In order to determine whether the property in the goods has passed from the seller to the buyer the real point for consideration would be whether the seller has parted with the control over the disposal of the goods. If he endorses the bill of lading in blank and hands it over to the agent for delivery with instructions that he shall not hand it over until the goods are paid for, that will indicate that the seller has expressed his intention to retain control over the disposal of the goods. The petitioners, who were the agents residing in the Andhra State for the sale of cotton textiles by Bombay sellers to dealers in Andhra State, booked orders in the indent form and sent the same to the Bombay sellers who despatched the goods by rail and sent the railway receipts to the petitioners. In cases where the buyers refused to take delivery of the goods, the petitioners took delivery of the same from the railway, stocked them in their godown and sold and delivered them to fresh buyers. In certain cases the petitioners

were concerned only so far as taking the indents, receiving the railway receipts, handing them over to buyers, and sometimes collecting the consideration and transmitting the same to the sellers: *Held*, that the petitioners were liable to tax under section 14-A of the Act as agents of the non-resident person.—G. GILDA TEXTILE AGENCY, VIJAYAWADA v. THE GOVERNMENT OF ANDHRA PRADESH, HYDERABAD [1959] 10 S.T.C. 368 (A.P.) affirmed by the Supreme Court in [1962] 13 S.T.C. 738 : See below.

—Under certain agreements, the appellant was appointed as indenting agent in Andhra Pradesh for cloth merchants, who resided and carried on business outside Andhra Pradesh. The appellant was required to book orders and to forward them to the principals, receiving commission on sale of goods despatched to Andhra Pradesh. In respect of one category of sales for which the appellant was sought to be made liable under section 14-A of the Madras General Sales Tax Act, 1939, the appellant, besides booking orders, received the railway receipts from the non-resident principals, handed them over to the buyers and sometimes collected and transmitted the amounts to the non-resident principals. The High Court held that the non-resident principals were carrying on the business of selling goods in Andhra Pradesh and that the appellant as their agent was liable to be assessed to tax under section 14-A of the Act. *Held*, that the appellant came within the four corners of section 14-A and was therefore liable to be taxed under that section. Decision of the High Court of Andhra Pradesh in *G. Gilda Textile Agency, Vijayawada v. The Government of Andhra Pradesh, Hyderabad* [1959] (10 S.T.C. 368) affirmed. *Mahadaya Premchandra v. Commercial Tax Officer, Calcutta* [1958] (9 S.T.C. 428) distinguished.—GILDA TEXTILE AGENCY, VIJAYAWADA v. THE STATE OF ANDHRA PRADESH AND ANOTHER [1962] 13 S.T.C. 738 (Supreme Court).

Agent of non-resident dealer—“Agent” in section 14-A, Madras Act—Meaning of—Whether authority to buy or sell necessary—Mere representation of non-resident in his dealings with others—Whether sufficient—Dealers in piece-goods—Levy of additional tax on agent under section 3(2), proviso—Legality.—The word “agent” in section 14-A of the Madras General Sales Tax Act, 1939, must be understood to have the meaning accorded to it by section 182 of the Indian Contract Act, 1872. If, therefore, the assessee were employed by the non-resident dealer to do some act for or on his behalf or to represent him in his dealings with others, the assessee would become agent of the non-resident. There is nothing in section 14-A

which requires that for an agent to be regarded as a dealer he must have the authority to buy or sell on behalf of the principal. It will be the duty of the assessing authorities to distinguish persons who are concerned in the business in a representative capacity on behalf of the non-resident dealer from others who merely play some casual part in the business, but lacking the essential requirement of agency, namely representative capacity. That will be a question of fact to be decided in each case on its own circumstances. For the purpose of defining a dealer residing in the Madras State within the meaning of the proviso to section 3(2), the fictional conception of a "dealer" introduced by section 14-A should not be applied. In respect of certain transactions, where the non-resident dealers agreed to sell certain goods to the buyers in Kerala, Pondicherry and Madras, the assesseees were engaged by the non-resident dealers to take delivery of the goods at Madras from the railway goods shed, store the goods in their godown, and then deliver the goods at Madras to the buyers or their agents after receiving assurance that the buyers had remitted the price to the non-resident dealers. The question was whether the assesseees were liable to be taxed under section 14-A: *Held*, that the assesseees were agents of the non-resident dealers, that the transactions must be deemed to be sales effected in the Madras State and that therefore the assesseees were liable to be taxed under section 14-A. *Srinivas Gopikishen Badruka v. State of Andhra Pradesh* [1962] (13 S.T.C. 393) and *Jain Jari Stores v. State of Madras* [1962] (13 S.T.C. 220) followed. *Radhakrishna Rao v. State of Madras* [1952] (3 S.T.C. 121) referred to.—*KISHENLAL ROOPCHAND AND COMPANY v. THE GOVERNMENT OF MADRAS* [1965] 16 S.T.C. 802 (Mad.).

Nature of liability.—*SARJU PD. PRITAM LAL v. JUDGE, REVISIONS, SALES TAX, U.P.* [1963] 14 S.T.C. 884 (All.).

Agent for several non-resident principals.—*One assessment covering entire turnover of all non-resident principals.*—**Legality.**—Section 18 of the General Sales Tax Act, 1125, does not permit an assessment of an agent covering the entire turnover of all the non-resident principals of the agent. There must be as many separate assessments as there are non-resident principals. To approximate a single assessment of the whole turnover of a dealer in respect of all the commodities in which he deals to a single assessment of the whole turnover of all the non-resident principals for whom the agent acts will be to do violence to the provisions of the section and the fiction it has created.—*JAYANTHILAL & BROS. v. APPELLATE ASSISTANT COMMISSIONER OF AGRICULTURAL*

INCOME-TAX AND SALES TAX, ERNAKULAM, AND ANOTHER [1961] 12 S.T.C. 245 (Ker.).

Dealer—Agent of non-resident—Authority to buy on behalf of principal—Whether necessary.—See *SRINIVAS GOPIKISHEN BADRUKA v. STATE OF ANDHRA PRADESH* [1962] 13 S.T.C. 393 (Supreme Court) under DEALER.

—**Agent of non-resident—Legality of assessment, under section 18, Hyderabad Act.**—See *RAMDAYAL GHASIRAM v. GOVERNMENT OF ANDHRA PRADESH* [1960] 11 S.T.C. 705 (A.P.) under DEALER.

Agents of dealers outside State.—See also *DEALER* and *CONSTITUTION OF INDIA*.

Agent of non-resident selling tea and rubber on behalf of principal—Liability to tax.—See *AGRICULTURAL PRODUCE*.

Right to plead—Whether restricted to Pleadings and Registered Accountants.—Under the rules framed under the U.P. Sales Tax Act (XV of 1948 as amended by the U.P. Amendment Act XXV of 1948) while an agent of a party has a right to act, that is, to present an application, to receive notices etc., the right to plead is restricted only to the party himself or a qualified pleader or a registered accountant engaged by the party. An agent of a party who is neither a pleader nor a registered accountant has no right to plead before the Judge (Sales Tax), (Appeals) or (Revisions).—*RADHEY SHYAM TANDON v. THE JUDGE (APPEALS) SALES TAX, U.P., LUCKNOW, AND ANOTHER* [1952] 3 S.T.C. 329 (All.).

—Subject to certain well-known exceptions every person who is *sui juris* has a right to appoint an agent for any purpose whatever and he can do so when he is exercising a statutory right no less than when he is exercising any other right. Therefore in order to make out that a right conferred by statute is to be exercised personally, and not by an agent there must be something in the Act either by way of express enactment or necessary implication which limits that common law right. The provisions of rules 67 and 68 of the U.P. Sales Tax Rules have cut down an assessee's common law right to appoint an agent for pleading on his behalf and therefore his special power-of-attorney agent cannot plead before the Judge (Appeals) Sales Tax. Rule 77A, even after its amendment in 1954, is confined to acting and not to pleading. In the presence of the express provisions of rules 67 and 68 which give right to plead to the party or to a lawyer, rule 77A can only relate to acting and not to pleading. *Jackson & Co. v. Napper*; *In re Schmidt's Trade Mark* (35 Ch. D. 162) and *Queen v. Assessment Committee of Saint Mary Abbots, Kensington* [1891] (1 Q.B.D. 378) distinguished. *Radhey Shyam Tandon v. The*

Judge (Appeals) Sales Tax, U.P., Lucknow, and Another [1952] (3 S.T.C. 329; A.I.R. 1953 All. 57) followed.—*SHRI RADHEY SHYAM TANDON v. JUDGE (APPEALS) SALES TAX, LUCKNOW RANGE, LUCKNOW, AND ANOTHER* [1958] 9 S.T.C. 534 (All.).

Presentation of revision application of Commissioner by peon—Whether proper—Whether peon duly authorised agent.—In the case of a revision application presented by a duly authorised agent under rule 69(1) of the U.P. Sales Tax Rules, 1948, the law does not require that the authority empowering the agent must be in writing. That the agent is duly authorised to present the application may be determined by the circumstances. When rule 69(1) provides for a revision application being sent by registered post, it does not prescribe a mandatory requirement but merely provides a rule for the benefit of the applicant. It could not be said that in order that a revision application must be entertainable it must be sent by registered post and not by ordinary post. Where a peon who presented a revision application of the Commissioner of Sales Tax was one employed by the Commissioner and was acting in the ordinary course of his duties when he delivered the revision application, the Judge (Revisions) was justified in concluding that the peon had been duly authorised by the Commissioner to present the revision application and there was nothing contrary to the law in the Judge (Revisions) accepting the revision application. Even if delivery of the revision application by the peon was treated as its delivery by ordinary post, it could not be said that Judge (Revisions) acted illegally in accepting the revision application. The acceptance of the revision application did not vitiate the proceedings taken thereon by the revising authority.—*UPPER INDIA SUGAR MILLS v. COMMISSIONER OF SALES TAX, U.P.* [1966] 17 S.T.C. 536 (All.).

Sale of Government controlled foodgrains—Whether relationship principal and agent—Liability to sales tax—"Sale", meaning of.—If a person does an act which has the effect of transferring property in certain goods it amounts to selling them regardless of whether the property, before the transfer, vested in him or another person. The definition of "sale" in the U.P. Sales Tax Act, 1948, does not require that the act amounting to sale must be done by the owner of the property. Under the definition the nature of the goods sold is immaterial. So long as the business consists of buying or selling them it is immaterial that the business is subject to certain restrictions and not at the absolute discretion of the person doing the business. The assessee was appointed handling agents (retail) for sale of Government controlled foodgrains. Under the agreement the assessee

were required to establish a retail shop in a certain place, display a notice that Government controlled foodgrains were sold there at such and such rates, obtain foodgrains from the Government and deposit their price at the rates fixed by the authorities from time to time, maintain accounts and stock registers and send daily reports to certain authorities. Foodgrains were not returnable to the authorities for any reason and in any circumstance. The rates fixed for the sale of foodgrains to the customers were exclusive of the sales tax payable by the assessee and the liability for its payment had been expressly imposed upon them. The assessee was forbidden to sell any other foodgrains or to sublet or assign the benefit of the agreement. The agreement provided that the assessee would be liable to be prosecuted for criminal breach of trust under the Penal Code for short weighing, mixing inferior foodgrains, charging higher prices from customers, showing fictitious sales in their registers and refusing to sell foodgrains. The question was whether the assessee was only agents for the sale of foodgrains to the customers: *Held*, that the agreement created the relationship of buyer and seller and not of principal and agent and the assessee was buyers of the foodgrains from the Government. They were, therefore, dealers and when they transferred the property in the foodgrains to their customers on payment of the price, they sold them and became liable to pay sales tax on the turnover of the sales. *Goverdhan Hathibhai & Co. v. Appellate Assistant Commissioner of Agricultural Income-tax and Sales Tax, Trivandrum* [1961] (12 S.T.C. 464) dissented from.—*COMMISSIONER OF SALES TAX, U.P. v. JIWAN DAS* [1966] 18 S.T.C. 264 (All.).

Transfer of principal's goods to agent's business and collection of commission on the transaction—Liability of agent to sales tax.—The assessee, a local agent of a non-resident principal and carrying on a business of his own transferred the goods of his principal to his own business and collected commission from his principal on the transaction. The assessee contended that the transaction did not involve any sale inasmuch as the same person could not sell goods to himself: *Held*, that the assessee held two different capacities and when he transferred the goods to himself, he not only acted in that transaction as the agent of his non-resident principal, but also as a purchaser. There was nothing wrong in this dual capacity coming into play in the transaction which was clearly within the definition of a "sale" in the Madras General Sales Tax Act.—*L. S. CHANDRAMOULI AND COMPANY v. THE STATE OF MADRAS* [1966] 18 S.T.C. 325 (Mad.).

Liability of agent for supplying bags in which foodgrains (exempted commodity) is supplied to Government.—The petitioner was an agent of the Government for the purchase of paddy and rice in a certain district. Under the agreement the petitioner was responsible for taking custody, packing, transporting to depot and safe storage of the foodgrains. The question was whether the petitioner was liable to pay sales tax on the cost of gunny bags in which he supplied the foodgrains to the Government. The agreement only mentioned the quality of the gunny bags which were to be used for such packing and the petitioner, while submitting his bill for payment, included the actual cost price of the gunny bags and sales tax which he had paid when he purchased them from other persons: *Held*, that under section 188 of the Contract Act an agent having an authority to carry on a business has also the implied authority to do every lawful thing which is necessary for that business including those things which are usually done in the course of conducting such business. Paddy and rice are ordinarily collected and supplied in gunny bags and consequently the purchase of gunny bags and the storage and transport of paddy and rice in such gunny bags would come within the scope of section 188 of the Contract Act. Therefore the relationship of principal and agent which existed between the Government and the petitioner for the primary purpose of procuring paddy and rice would, by implication, subsist for the ancillary purpose of purchasing gunny bags for storage and supply of such foodgrains. The petitioner was therefore not liable to sales tax in respect of the supply of gunny bags. *Varasuki and Co. v. The Province of Madras* [1951] (2 S.T.C. 1), *Mohanlal Jogani Rice and Atta Mills v. The State of Assam* [1953] (4 S.T.C. 129), *Nizam Sugar Factory Ltd. v. Commissioner of Sales Tax, Hyderabad* [1957] (8 S.T.C. 61), *A. S. Krishna & Co., Ltd., Guntur v. The State of Andhra* [1956] (7 S.T.C. 26) and *Jaikishan Gopikishan of Sanawad v. Commissioner of Sales Tax, Madhya Bharat Government* [1957] (8 S.T.C. 286) distinguished.—*SRI DASARATHI MOHAPATRA v. THE STATE OF ORISSA* [1957] 8 S.T.C. 720 (Ori.).

AGRICULTURAL IMPLEMENTS

Agricultural implements—Meaning of—Centrifugal water pumps—Whether agricultural implements and exempt from sales tax.—Centrifugal water pumps used for pumping water from the well are not “agricultural implements” within the meaning of item No. 18 of Notification No. S.T. 119/X-928-1948 dated 7th June, 1948, issued by the U.P. Government under section 4 of the U.P. Sales Tax Act, 1948, and they are therefore not

exempt from sales tax. “Agricultural implements” means the apparatus or instruments employed in agriculture. Merely because water pumped out from wells by means of the water pumps can be used for irrigation, it cannot be said that they are instruments employed in agriculture.—*DELTA ENGINEERING CO. PRIVATE LTD. v. COMMISSIONER OF SALES TAX* [1963] 14 S.T.C. 515 (All.).

Agricultural implements—Meaning of—Cane crushers and boiling pans—Whether agricultural implements and exempt from sales tax.—An agricultural implement is an implement that is used in agriculture, and any implement that is used after the agricultural process comes to an end and a manufacturing process commences is not an agricultural implement. In the case of *gur*, agricultural process finishes when sugarcane is harvested and brought home, and preparation of *gur* from it is no continuation of the agricultural process, howsoever wide a meaning may be given to the word “agriculture”. As any implement that is used in preparing *gur* is not an agricultural implement, cane crushers and boiling pans are not “agricultural implements” within the meaning of those words as mentioned in Government Notification No. S.T. 119/X-928 dated 7th June, 1948, made under section 4 of the U.P. Sales Tax Act, 1948, and they are not exempt from sales tax. *Laxman Mhasu and Others v. Narhari Dadasa Gujar* (A.I.R. 1924 Bom. 294) and *Gujar Singh v. Babu Ram* (A.I.R. 1928 Lah. 943) dissented from.—*BHARAT ENGINEERING AND FOUNDRY WORKS v. THE U.P. GOVERNMENT* [1963] 14 S.T.C. 262 (All.).

Agricultural implements manufactured from scrap iron—Whether exempt—“Scrap iron” has not been defined in the Hyderabad General Sales Tax Act, 1950. If it is to be deemed to be the same stuff as raw iron mentioned in item 29 of Schedule I of the Act, agricultural implements manufactured from that stuff have to be exempted.—*RAJAB ALI PIRANI v. STATE OF ANDHRA PRADESH* [1967] 19 S.T.C. 312 (A.P.).

Agricultural implements—Chaff-cutter—Whether mower.—A “chaff-cutter” does not fall under entry No. 1 of Schedule I of the Madhya Pradesh General Sales Tax Act, 1958, read with item 12 of Notification No. 736-3694-V-SR dated 1st April, 1959. The term “mower” as used in item No. 12 of the notification dated 1st April, 1959, cannot be understood in a wide sense so as to include chaff-cutters. The term “mower” must be understood as meaning a machine for cutting down stalks, stems, hay, grass etc. standing on earth. Chaff-cutters are those machines which are used for chopping stalks, stems, hay, grass

etc. into small pieces for fodder after their removal from the earth. The question whether chaff-cutters sold by the assessee fell within the meaning of the term "mower" is clearly a question of law. *Commissioner of Sales Tax v. Kapila Machinery Company* (1961 M.P.L.J. 1295) referred to.—COMMISSIONER OF SALES TAX MADHYA PRADESH *v.* AGRICULTURAL IMPLEMENTS DEALERS' SYNDICATE [1966] 18 S.T.C. 524 (M.P.).

Agricultural implements — Exemption of agricultural implements specified by State Government by notification—Notification mentioning "hoes (all kinds)"—Phawadas—Whether entitled to exemption.—Item 1 of Schedule I of the Madhya Pradesh General Sales Tax Act, 1958, exempted from sales tax "agricultural implements worked or operated exclusively by human or animal agency specified by the State Government by notification in the Official Gazette." Serial No. 1 of the Notification No. 736-3694-V-SR dated 1st April, 1959, issued by the State Government under item 1 of Schedule I mentioned "hoes (all kinds)". The assessee who manufactured the implement commonly known as "*phawada*" which was made out of a square or oblong iron plate with an eye at the top through which a wooden handle was inserted, claimed exemption from sales tax under item 1 of Schedule I of the Act: *Held*, (1) that item 1 of Schedule I exempted "agricultural implements" alone from sales tax. The function of the State Government was only to specify such implements. When the State Government specified "hoe" as one such implement, the implement must also satisfy the test of its being an "agricultural implement"; (2) that the burden was on the assessee to show that the implement for which he was claiming exemption was an "agricultural implement" which was generally and commonly used for the purposes of agriculture. That the implement could also be used for agricultural purposes was not sufficient. It must be shown that the principal and primary use of the implement was for agriculture; (3) that a *phawada* was included within the English expression "hoe". But from that it did not necessarily follow that it was also an "agricultural implement" exempt from sales tax under entry 1 of Schedule I; and it was for the Sales Tax Authorities to decide that question after considering appropriate evidence. *Agrawal Brothers v. Commissioner of Sales Tax, M.P.* [1965] (16 S.T.C. 860; 1965 M.P.L.J. 842) and *Pashabhai Patel & Co. (P.) Ltd. v. Collector of Sales Tax, Maharashtra State* [1964] (15 S.T.C. 32) referred to.—COMMISSIONER OF SALES TAX, M.P. *v.* ANIL IRON WORKS, INDORE [1968] 21 S.T.C. 496 (M.P.).

AGRICULTURAL OR HORTICULTURAL PRODUCE

Agriculturist registered as dealer selling agricultural produce raised in his fields after meeting his personal requirements.—A person does not necessarily fall within the definition of a "dealer" in section 2(c) of the C.P. and Berar Sales Tax Act, 1947, merely because he sells or supplies commodities. In order to bring him within the definitions it is additionally necessary to show that he carries on those activities as his business. While an agriculturist cultivating his lands engages himself in the business of agriculture, that is not the same thing as engaging in the business of sale or supply of agricultural produce. Again, an agriculturist may sell the produce from his lands but this activity cannot by itself be regarded as a business of sale or supply of agricultural produce; nor again would the two sets of activities taken together be said to constitute such a business, unless his primary intention in engaging himself in such activities was to carry on the business of sale or supply of agricultural produce. The petitioner owning considerable lands in which he raised crops of cotton, groundnuts and grain sold, after meeting his personal requirements, the balance of the produce. The petitioner was also a registered dealer in coal, machinery, cotton, cotton-seed, groundnut and cotton bales but he maintained separate accounts for the two activities. There was no finding by the Sales Tax Authorities that the petitioner acquired the lands with the primary intention of doing business of selling or supplying agricultural produce: *Held*, that it could not be said that the petitioner, when he cultivated his fields and sold the produce therefrom was carrying on the business of selling and supplying goods and therefore he could not become liable to pay sales tax so far as his turnover from agriculture was concerned. *The State of Bombay v. The Ahmedabad Education Society* [1956] (7 S.T.C. 497; 58 Bom. L.R. 572) and *Smith v. Anderson* [1880] (15 Ch. D. 247) relied on.—GIRDHARILAL JIWANLAL *v.* THE ASSISTANT COMMISSIONER OF SALES TAX (APPEALS), NAGPUR, AND ANOTHER [1957] 8 S.T.C. 732 (Bom.).

—See also GROUNDNUTS *infra*.

Agricultural produce—Exemption—Dealer—Scope of section 2(r), Madras Act—Agent selling produce entrusted to him for sale by agriculturists—Turnover of agent—Whether exempt.—Under the Madras General Sales Tax Act, 1959, an agent with dominion over the goods of the principal and with authority to transfer the property in such goods and consequently effect sales

and acquire a turnover in respect of such transactions, cannot be treated on the same footing as the agent of a non-resident principal assessed under section 14-A of the Madras General Sales Tax Act, 1939. The turnover acquired by the agent in such circumstances is in law as well as in fact his own turnover for the purposes of sales tax assessment, and it cannot be considered as the principal's turnover. Where the turnover is that of the agent himself under the statutory definition of "dealer" given in the 1959 Act, the exemption under the proviso to section 2(r) can be granted only if the agricultural produce is grown by the agent himself or grown on a land in which he has an interest, whether as owner etc. As long as the produce does not satisfy this condition, the benefit of the proviso will not be available to the agent. Where only the principal himself is an agriculturist selling the surplus produce and is therefore not a dealer engaged in the business of selling goods the proviso to section 2(r) will not apply in any event to the transactions of the agent on behalf of such principal.—*THE STATE OF MADRAS v. TIRUCHENGODE CO-OPERATIVE MARKETING SOCIETY LTD.* [1965] 16 S.T.C. 760 (Mad.).

Agricultural or horticultural produce—Nature of exemption under Hyderabad General Sales Tax Act.—One of the important conditions for the application of the proviso to section 2(m) of the Hyderabad General Sales Tax Act, 1950, is that the agricultural produce must be grown by the dealer himself or must be grown on land in which he has an interest, whether as owner, usufructuary mortgagee, tenant or otherwise. Where all that the assessee is entitled to is only the exclusive right to the usufruct, it cannot be said to be "an interest in the land" so as to entitle him to the benefit of the proviso. The expression "otherwise" in the proviso should be construed on the application of the principle of *ejusdem generis*. The one feature that runs through the three classes of interest specified in the clause, *viz.*, ownership, usufructuary mortgage or tenancy, is the right to the exclusive possession of the land and any interest to be brought within the scope of the term "otherwise" in section 2(m) must satisfy that generic requirement, the right to exclusive possession of the land itself. The definition of "tenant" contained in the Hyderabad Tenancy and Agricultural Lands Act, 1950, cannot be imported into the Hyderabad General Sales Tax Act, 1950. *S. T. Sultan Ahmed Rowther and Others v. The State of Madras* [1954] (5 S.T.C. 166) relied on.—*K. SATYANARAYANA & Co. v. SALES TAX OFFICER, WARANGAL, AND OTHERS* [1958] 9 S.T.C. 591.

Conversion of cocoanut husks into fibre and sale of fibre.—The question whether a particular process alters the character of the agricultural or horticultural produce to that of manufactured article is a question of fact but as a general guiding principle of law it can be safely laid down that if an agriculturist puts the produce gathered from his lands to certain minimum processes ordinarily employed by an agriculturist to make it really marketable or more marketable or to make it fit to be taken to market, it cannot be said that the produce ceases to be an agricultural or horticultural produce. So if an agriculturist, who collects cocoanuts from his own gardens, dehushes them and in order to preserve the value and to prevent the deterioration of the husks, converts the husks into fibre by processes ordinarily employed by cultivators, human labour in the present case, only to make the husks a really marketable commodity, fibre, and to make them fit to be taken to the market, it cannot be said that the husks have ceased to be horticultural produce. Therefore the fibre is entitled to the exemption provided by the proviso to section 2(i) of the Madras General Sales Tax Act, 1939.—*DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX, KERALA STATE v. A. P. RAMAN* [1960] 11 S.T.C. 263 (Ker.).

Agricultural produce—Whether includes fruits.—The expression "agricultural produce" in rule 5(2)(f) of the Hyderabad General Sales Tax Rules, 1950, is confined only to the agricultural produce understood in a narrow sense, and excludes horticultural produce. Therefore, the notification dated 15th April, 1953, directing levy of sales tax on fresh fruits is not obnoxious to rule 5(2)(f), which directed levy of sales tax on agricultural produce at the purchase point. *Commissioner of Income-tax, West Bengal, Calcutta v. Raja Benoy Kumar Sahas Roy* [1957] (32 I.T.R. 466) and *Commissioner of Income-tax, Madras v. K. E. Sundara Mudaliar and Others* [1950] (18 I.T.R. 259; A.I.R. 1950 Mad. 566) relied on.—*SRI KRISHNA & Co. AND ANOTHER v. GOVERNMENT OF ANDHRA PRADESH* [1962] 13 S.T.C. 61 (A.P.).

Areca nut—Right to collect areca nut from tope—Sale of cured areca nut—Right to exemption.—The expression "otherwise" in the proviso to section 2(i) of the Madras General Sales Tax Act, 1939, should be construed on the application of the principle of *ejusdem generis*. The one feature that runs through the three classes of interest specified in the clause, *viz.*, ownership, usufructuary mortgage or tenancy, is the right to the exclusive possession of the land and any interest to be brought within the scope of term "otherwise" in section 2(i) must satisfy that

generic requirement, the right to exclusive possession of the land itself. The assessee, who was a dealer in cured arecanuts, entered into a contract with the owner of a tope containing arecapalms under which the assessee became entitled to collect usufruct of the trees in that tope. The period of the contract was one year, and even when renewed it was only on an annual basis. All the horticultural operations had to be carried out under the terms of the contract by the owner of the tope. The question was whether the assessee was entitled to the benefit of the proviso to section 2 (i) of the Madras General Sales Tax Act, 1939, in respect of the proceeds of the sales of arecanut on the ground that they were sales by a dealer of "agricultural or horticultural produce grown on land in which he had an interest whether as owner, usufructuary mortgagee, tenant or otherwise": *Held*, (1) that the question whether the contract created any interest in land could not be decided on the basis of the definition of immovable property or movable property in the Registration Act or in the Transfer of Property Act. What section 2 (i) of the Madras General Sales Tax Act, 1939, requires is an "interest in land" and not "interest in immovable property" and therefore the definition of immovable property in the General Clauses Act cannot be made applicable in construing the expression "land" in section 2 (i) of the General Sales Tax Act. The question had to be decided on the general principles enunciated in *Marshall v. Green* (1875) L.R. 1 C.P.D. 35. (2) that the contract did not amount to a lease of the land itself. All that the assessee got under the contract was only an exclusive right to the usufruct and that could by no stretch of language be deemed to be an "interest in land" so as to entitle him to the benefit of the proviso to section 2 (i). The case fell within the scope of the rule in *Mohanlal Hargovind v. Commissioner of Income-tax, Central Provinces and Berar* ([1949] A.C. 521; 17 I.T.R. 473).—S. T. SULTAN AHMED ROWTHER AND OTHERS *v.* THE STATE OF MADRAS [1954] 5 S.T.C. 166 (Mad.).

—The proviso to section 2 (i) of the Madras General Sales Tax Act, 1939, is conceived in the interests of the agriculturists. It excludes from any tax liability under the Act sale of agricultural and horticultural produce the primary condition to be satisfied being that it must be produce of the land which either belongs to the seller or of the land in which he has an interest as specified by section 2 (i) of the Act. To restrict that concession to sale of arecanuts only if those arecanuts are sold in the state in which they are immediately on being gathered from the trees,

would render the statutory exclusion meaningless. Where any agricultural or horticultural produce has to be subjected to a minimum processing before that produce can be marketed at all, it will still retain its character as agricultural or horticultural produce despite that minimum processing. The assessee grew and marketed arecanuts in the Coimbatore district in accordance with the practice that prevailed in that district. The assessee gathered the arecanuts while they were still raw. They were then peeled and the kernels were thereafter sliced, boiled and dried. It was only after this process that the arecanuts were fit to be marketed and there was no market for them as gathered from the trees. The question was whether the cured arecanuts continued to be horticultural produce within the meaning of the proviso to section 2 (i): *Held*, that the goods sold by the assessee were only subjected to the minimum processing absolutely necessary for their sale and therefore what the assessee sold still retained its character as horticultural produce within the meaning of the proviso to section 2 (i). *S. T. Sultan Ahmed Rowther v. The State of Madras* [1954] (5 S.T.C. 166) and *Killing Valley Tea Co. Ltd. v. Secretary of State for India* [1920] (I.L.R. 48 Cal. 161) referred to.—THE STATE OF MADRAS *v.* R. SARAVANA PILLAI [1956] 7 S.T.C. 541 (Mad.).

—The assessee grew and marketed arecanuts in the South Kanara district in accordance with the practice that prevailed in that district. The assessee gathered the nuts after they were ripe, peeled and dried the kernels and then sold them: *Held*, that what was sold by the assessee did not cease to be horticultural produce within the meaning of the proviso to section 2 (i). *The State of Madras v. R. Saravana Pillai* [1956] (7 S.T.C. 541) followed.—THE STATE OF MADRAS, *In re* [1956] 7 S.T.C. 546 (Mad.).

Arecanuts—*Person owning arecanut plantation—Sale of arecanuts after dehushing and drying—Whether arecanuts subjected to any physical, chemical or other process—Whether entitled to exemption.*—The petitioner, an agriculturist owning an arecanut plantation, plucked ripe nuts and after drying and dehushing them sold them as dried nuts to merchants. The Deputy Commercial Tax Officer assessed the petitioner to sales tax on the ground that the arecanuts, in the process of dehushing, were subjected to physical, chemical or other process for being made fit for consumption within the meaning of Explanation (1) to section 2 (r) of the Madras General Sales Tax Act, 1959, and they were therefore not agricultural or horticultural produce: *Held*, that when the arecanuts are plucked, dried and dehushed they

do not undergo any physical or any other process making the article thereby alter its character as agricultural produce. The process of dehusking is the minimum process absolutely necessary for making the produce marketable and fit for consumption. The petitioner was, therefore, not liable to tax in respect of the proceeds of sale of arecanuts grown on his land.—*K. S. VARADARAJA IYENGAR v. DEPUTY COMMERCIAL TAX OFFICER, METTUPALAYAM* [1967] 19 S.T.C. 41 (Mad.).

Casuarina—*Sale after cutting into pieces—Whether cutting involves any change of form—Whether sale exempted under proviso to section 2(i), Madras General Sales Tax Act, 1939, as amended by Act 16 of 1956.*—Where the petitioner growing casuarina trees cut the trees into short pieces for purposes of transporting them to places where they could be sold and claimed exemption in respect of the sale of this casuarina on the basis of the proviso to section 2(i) of the Madras General Sales Tax Act, 1939: *Held*, that it could not be said that the casuarina was not sold in the form in which it was produced and the petitioner was therefore entitled to the benefit of the exemption envisaged in the proviso to section 2(i). Though the process of cutting the tree into pieces does not amount to cleaning, grading or sorting, it does not make any difference so long as there is no alteration in its original form or character. It is only when the produce loses its original character, that the question arises whether the physical process is only that of cleaning, grading or sorting.—*RAYAVARAPU MRITYANJAYA RAO v. THE STATE OF ANDHRA PRADESH* [1967] 20 S.T.C. 417 (A.P.).

Coconuts—*Sale of coconut by lessee of coconut topes—Liability to sales tax.*—The usufruct of coconut trees is horticultural produce and therefore sale of coconuts by a lessee of coconut topes, who is entitled to enjoy the usufruct of the coconut trees, is not liable to tax by virtue of section 2(r) of the Madras General Sales Tax Act, 1959.—*K. M. JAMAL MYDEEN v. THE STATE OF MADRAS* [1968] 22 S.T.C. 45 (Mad.).

Agriculturist whether dealer—*Sale of arecanuts—Liability to tax.*—See *DEVIAH GOWDER v. COMMERCIAL TAX OFFICER* [1962] 13 S.T.C. 422 (Mad.) under DEALER.

Forest trees of spontaneous growth.—The juxtaposition of the words “agricultural” and “horticultural” and the reference to the “produce grown” in the proviso to section 2(i) of the Madras General Sales Tax Act, 1939, indicate that what is exempted from the “turnover” by the proviso is the produce of land resulting from the application of human effort to the land in the

shape of manuring, tilling, ploughing, planting, sowing, watering, weeding, pruning, harvesting etc. Forest trees of spontaneous growth cannot be regarded as “agricultural or horticultural produce grown on land” within the meaning of the proviso. Except in a few cases like those falling within section 5(iv) and (vi), the Madras General Sales Tax Act imposes a multiple tax at every point of sale and payment of tax at one sale point does not debar a levy of tax on another sale of the goods. The assessee, a merchant, entered into an agreement with the Government under which, in consideration of the payment of a lump sum to the Government, the assessee was granted the right to cut and remove bamboos from the Government forest for a period of 11 months. The bamboos were of spontaneous growth and the assessee was prohibited from cutting all the bamboos in a cluster or tender shoots less than a year old. There were also restrictions with regard to the entry into the forest and egress out of it when cutting bamboos. The assessee issued permits to various persons to cut and remove the bamboos and received moneys from them which were included in his turnover. The assessee objected to that inclusion on two grounds, *viz.*, that the sum was exempted under the proviso to section 2(i) and that the Government had already collected sales tax from him: *Held*, (1) that the bamboos could not be regarded as “agricultural or horticultural produce grown on land” and the assessee had no interest as “tenant or otherwise” in the land. The sum representing the sale price was therefore liable to be included in the assessee’s turnover; (2) that under section 8C the Government was entitled to collect the tax from the assessee and when the assessee sold the bamboos to others he was bound to pay sales tax to the Government, for in the case of bamboos tax is levied at the point of sale and is payable by the seller who might collect it from his purchasers.—*MANGALAPALLI RAMAKRISHNIAH v. THE STATE OF ANDHRA* [1956] 7 S.T.C. 482 (Andh.).

Groundnut—*Purchase of groundnuts from producers by registered manufacturer of groundnut oil.*—What is excluded from the taxable turnover by the proviso to section 2(i) of the Madras General Sales Tax Act, 1939, is only the proceeds of sale of agricultural produce grown by the dealer himself. A registered manufacturer of groundnut oil cannot therefore claim exemption from his turnover purchases of groundnuts made by him from persons who have themselves grown the groundnuts on their lands. The expression “his turnover” in the proviso to section 2(i) means the dealer’s turnover and all the three

pronouns "himself", "he" and "his" in the proviso also refer to the dealer mentioned earlier in section 2(i). "Turnover" as defined in section 2(i) does not include every sale or every purchase. It includes only sales and purchases by dealers as defined in the Act. Sales by a producer, *viz.*, by a person who grows agricultural or horticultural produce on his own land or on any land in which he has an interest, whether as owner, usufructuary mortgagee, tenant or otherwise, are not within the scope of section 2(i) unless the producer is also a dealer. Where the sale is by the producer there is no seller's turnover but there is a turnover of purchase in the case of the dealer-cum-buyer and that is what is made taxable by the Act and the Rules. A producer-seller, whether he be a producer pure and simple, or whether he be producer-cum-dealer, is not really affected by the tax levied on the purchase turnover of an article like groundnut.—SRI KANYAKAPARAMESWARI GINNING AND GROUNDNUT OIL MILL CONTRACTORS COMPANY *v.* THE STATE OF MADRAS [1955] 6 S.T.C. 38 (Mad.).

—**Sale of groundnuts by agriculturists—Provision imposing tax on purchasers—Validity.**—*Per* SHRIPAT RAO and SRINIVASACHARI, JJ.—The provisions in sub-rule (2) of rule 5 of the Hyderabad General Sales Tax Rules for the levy of tax on the purchase turnover are not outside the scope of the Act and are therefore valid. An agriculturist selling the produce of his land cannot be regarded as a dealer within the meaning of section 2 of the Hyderabad General Sales Tax Act, 1950, as he is not engaged in buying and selling in the course of trade or business and a sale by him is therefore not a sale by a dealer. Although sale of groundnuts by an agriculturist may not be a sale transaction of a dealer, it does not cease to be a purchase transaction of a dealer liable to tax simply because the dealer purchases the goods from an agriculturist. As all persons who deal in groundnuts are treated alike and are taxed on the purchase transaction alone, it cannot be said that there has been a deliberate discrimination or singling out, and therefore rule 5(2) of the Hyderabad General Sales Tax Rules, 1950, does not offend Article 14 of the Constitution. The petitioner was a member of certain oil mill owners' association, the members of which were all registered dealers under the Hyderabad General Sales Tax Act, 1950. The petitioner, like other members, purchased, in the course of his business, large quantities of groundnuts from persons who were agriculturists and producers of that commodity with the object of extracting oil therefrom. The Sales Tax Officer informed the members that they were liable to sales tax on the

purchase turnover of groundnuts and that they could not collect the tax from the agriculturists. The Commissioner of Sales Tax agreed with the view of the Sales Tax Officer. The petitioner thereupon filed an application under Article 226 of the Constitution: *Held*, (1) *per curiam*, that the application under Article 226 of the Constitution was maintainable; (2) (SHRIPAT RAO and SRINIVASACHARI, JJ.; ANSARI, J., *dissenting*) that the petitioner was liable to pay sales tax on the purchase turnover of the groundnuts and that he was not entitled to collect the tax from the agriculturists. SHRIPAT RAO, J.—Sales tax is a tax on the consumer. If the process of extracting oil is only a production and the ultimate purpose is the sale of the oil, then the petitioner can collect the sales tax at the time when he sells the oil. If he is a consumer, because he extracts the oil, then he has to pay the tax as a dealer buying the groundnut and he being himself the consumer, cannot collect the tax and cannot reimburse himself by collecting it from some other person. The payment of tax is not made dependent upon his prior reimbursement of the tax. ANSARI, J.—The petitioner is entitled to collect the tax provided the transaction of sale is taxable. Sales by agriculturists of groundnuts are not sales by dealers within the meaning of the Hyderabad General Sales Tax Act. Such a transaction is therefore exempted and neither party to it is liable to pay the tax. The entire provisions of rule 5(2) however are not *ultra vires* for in the case of sale of groundnuts by persons who are not selling the produce of their lands, the dealer who purchases the groundnuts from them can be taxed on the purchase turnover. The demand of tax from the applicant on the purchase value of groundnuts was not justified and should therefore be restrained.—KONDURI BUCHI RAJALINGAM *v.* STATE OF HYDERABAD AND OTHERS [1954] 5 S.T.C. 401 (Hyd.). On appeal to the Supreme Court, see the next para.

—Under the Hyderabad General Sales Tax Act, 1950, a dealer, as defined in it, purchasing groundnuts from an agriculturist is liable to pay tax on the purchase turnover. The proviso added to the definition of turnover by the Hyderabad General Sales Tax (Amendment) Act, 1953, leaves the main portion of the definition intact and only says that certain things shall be excluded from a person's turnover. The main portion only refers to the turnover of a dealer and not of an agriculturist. The proviso deals with a person who is both an agriculturist and a dealer and it excludes the proceeds of the sale by him of his own agricultural produce from his turnover as a dealer in goods. Under the Act tax is leviable on a sale either

on the seller or on the buyer but not on both and under rule 5(2) in the case of sale of groundnuts the buyer shall pay the tax provided he is a dealer. In respect of groundnuts tax is therefore payable by a dealer on his turnover of purchases of these goods. The seller of these goods, whether he is an agriculturist, or not, is not, in any case, liable to pay tax. For the purposes of the Act an agriculturist, not being a dealer, has no turnover. That being so, no question of exemption of the transactions by an agriculturist from the liability to pay the tax arises. Section 11 authorises a dealer only to collect a tax payable under the Act and where no such tax is payable, a dealer has no right to collect anything under that section. Under the Act a dealer is liable to pay the tax and an agriculturist, not being a dealer, has no such liability and therefore no tax can be collected from the latter. Sales tax need not be an indirect tax and a tax can be a sales tax though the primary liability for it is put upon a person without giving him any power to recoup the amount of the tax payable from any other party. The Essential Supplies (Temporary Powers) Act (XXIV of 1946) was not an Act declaring any commodity essential for the life of the community within the contemplation of Article 286(3). Any Act of Parliament declaring certain goods to be essential for its own purposes, as Act XXIV of 1946 does, is not an Act within the contemplation of Article 286(3). The Parliamentary Act, there contemplated, has to be passed in exercise of the powers contained in it and must clearly be referable to it. The contention that in view of Article 286(3) no tax can be levied on the sale of a commodity declared essential by Act XXIV of 1946 is not therefore correct. BOSE, J.—On and from August 17, 1950, when Parliament applied the Essential Supplies (Temporary Powers) Act of 1946 to Hyderabad, that Act became a Parliamentary enactment so far as the State of Hyderabad was concerned and therefore the declaration in that Act about essential commodities became a Parliamentary declaration for that area. When that Act declared groundnuts to be essential, it meant essential for the purposes for which such a commodity is normally essential, namely, the life of the community within the meaning of Article 286(3). Under that Article on and from the date of a Parliamentary declaration no law existing or future can take effect unless it has been reserved for the consideration of the President and has received his assent. As the Hyderabad General Sales Tax Act, 1950, imposing tax on purchase of groundnuts was not reserved for the consideration of the President, the levy of tax on purchase of groundnuts was illegal. *Konduri Buchi Rajalingam v. State of Hyderabad*

and *Others* [1954] (5 S.T.C. 401) affirmed. *Tata Iron & Steel Co., Ltd. v. The State of Bihar* [1958] (9 S.T.C. 267) referred to.—KONDURI BUCHIRAJALINGAM *v.* THE STATE OF HYDERABAD AND OTHERS [1958] 9 S.T.C. 397 (Supreme Court).

Rubber.—The use of the word “horticulture” in juxtaposition with the word “agriculture” in section 2(i) of the Madras General Sales Tax Act, 1939, cannot be construed to mean that the word “agriculture” is used in a narrow sense. Rubber may be construed as an agricultural produce. But the sale of agricultural or horticultural produce is exempt from the levy of sales tax only in the hands of a grower of such produce or a person having an interest in land in which the produce is grown.—INDIA COFFEE AND TEA DISTRIBUTING COMPANY LTD. *v.* STATE OF MADRAS [1955] 6 S.T.C. 47 (Mad.). See also [1958] 9 S.T.C. 769 (Mad.).

—The words “produce of the land” in the definition of “turnover” in section 2(i) of the Madras General Sales Tax Act, 1939, because of the constitutional provision not to discriminate, cannot be construed as referring only to lands situated within the Madras State, but having regard to the proposition that the Legislature must be presumed to observe the constitutional limits, must be interpreted as covering lands situated beyond the boundaries of the Madras State as well. Therefore, the levy of tax on the sales of rubber produced from lands outside the Madras State would be discriminatory and void, as rubber sold from the estates within the Madras State would not be liable to tax on the ground of being agricultural produce. Whether a particular process alters the character of the agricultural or horticultural produce to that of manufactured article is a question of fact, but as a general guiding principle of law it can be safely laid down that if an agriculturist puts the produce gathered from his lands to certain minimum processes ordinarily employed by an agriculturist to make it really marketable or more marketable or to make it fit to be taken to market, it cannot be said that the produce ceases to be an agricultural or horticultural produce. Where latex is hardened by the application of sulphuric acid, shaped in the form of sheets and dried with the help of smoke for purposes of preserving the latex and making it fit for marketing, the rubber is still “produce from land” and cannot be made liable to sales tax.—DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX, SOUTH ZONE *v.* SHERNEILLY RUBBER & CARDAMOM ESTATES LTD. AND OTHERS [1961] 12 S.T.C. 519 (Ker.).

Sugar-cane—Sale of agricultural produce—Nature of exemption under proviso to section 2(i), Madras

Act.—The petitioners were registered suppliers of sugar-cane to certain factories under the Madras Sugar Factories Control Act, 1949, but they were not the owners of all the lands in respect of which they were registered in the books of the factory as growers of sugar-cane. The lands registered in the petitioners' names fell into three categories: (1) lands owned by them, (2) lands held on leases by them, and (3) lands the produce of which was sold benami. The departmental authorities held that the sales of sugar-cane grown on lands owned by the petitioners and on lands proved to have been held on leases by the petitioners came within the scope of the exemption provided by the proviso to section 2(i). The question was whether the petitioners were entitled to that exemption in respect of sales of sugar-cane grown on lands which they failed to prove as having been leased to them and on lands the produce of which had been sold by the growers benami, that is, in the names of the petitioners: *Held*, (a) that the finding of the Tribunal on the question whether the petitioners had any interest in the land or not was a finding on a question of fact and the High Court should not normally interfere with such a finding; (b) that the finding of the Tribunal that the petitioners had no interest on a portion of the lands in category (2) and the lands in category (3) was fully justified by the evidence; (c) that the exemption for which the proviso to section 2(i) provides comes into play only if the sales are otherwise taxable and the taxability of the sales depends on the question whether the sales were by a dealer as defined by the Act. A sale even of agricultural or horticultural produce but with nothing more is not enough to establish that the seller is a "dealer"; (d) that if the petitioners were dealers then their turnover would be liable to tax, because in the absence of proof, that they had an interest in the lands as specified by section 2(i), they could not claim the benefit of that exemption; (e) that the mere gaining of a monetary advantage, with nothing more, would not by itself make the petitioners dealers in respect of the sales of sugar-cane grown by others and sold in the names of the petitioners. Cases remanded to consider the question whether the petitioners were dealers as defined by the Act.—C. K. N. S. NAGARAJAN *v.* STATE OF MADRAS [1959] 10 S.T.C. 605 (Mad.).

Sugar-cane—Jaggery—Grower of sugar-cane converting juice into jaggery and selling jaggery.—The exemption in section 2(i) of the Madras General Sales Tax Act, 1939, applies only to sales of agricultural produce as such and not to what the agricultural produce has been converted into by a process of manufacture. The assessee who

grew sugar-cane in his fields sold the sugar-cane itself in previous years. In the relevant year the assessee converted the sugar-cane into jaggery by a process of manufacture and sold the jaggery: *Held*, (1) that the assessee satisfied the requirements of the definition of "dealer" in section 2(b) of the Madras General Sales Tax Act, 1939, and the turnover on the sales of jaggery was liable to be assessed to sales tax; (2) that the sale of jaggery was not sale of agricultural produce within the meaning of the definition of "turnover" in section 2(i) of the Act.—K. P. VAIDYANATHA IYER *v.* THE STATE OF MADRAS [1954] 5 S.T.C. 94 (Mad.).

—Jaggery is not agricultural produce within the meaning of section 2(i) of the Madras General Sales Tax Act, 1939.—THE ANAKAPALLI CO-OPERATIVE MARKETING SOCIETY, ANAKAPALLI *v.* THE STATE OF ANDHRA PRADESH [1966] 18 S.T.C. 328 (A.P.).

—Lease of lands for growing sugar-cane—Rent payable in jaggery—Jaggery supplied to merchants who paid price to landlord—Whether sale of agricultural produce.—The plaintiff was landlord and he leased his nanja lands to tenants for raising sugar-cane crop, the rent being payable in jaggery. The tenants supplied jaggery to wholesale merchants at prices fixed according to sample and the merchants credited the value of such jaggery to the plaintiff's accounts in their ledgers and paid the same to the plaintiff: *Held*, that jaggery was not an agricultural produce within the meaning of section 2(i) of the Madras General Sales Tax Act, 1939, that the plaintiff was a "dealer" and that therefore he was liable to sales tax in respect of the turnover of the sale of jaggery by him. *Vaidyanatha Iyer v. State of Madras* [1954] (5 S.T.C. 94) followed.—THE STATE OF MADRAS *v.* V. R. B. GOPALARATHNAM GUPTA [1957] 8 S.T.C. 16 (Mad.).

—*Rab* or jaggery is not "agricultural or horticultural produce, grown by a person or grown on any land in which he has interest" within the meaning of the proviso to section 2(i) of the U.P. Sales Tax Act, 1948, and it is therefore not exempt from sales tax. *K.P. Vaidyanatha Iyer v. The State of Madras* [1954] (5 S.T.C. 94) and *State of Madras v. V. R. B. Gopalarathnam Gupta* [1957] (8 S.T.C. 16) relied on.—SARDAR JOGENDRA SINGH *v.* SALES TAX OFFICER, SECTION II, MUZAFFARNAGAR; AND ANOTHER [1962] 13 S.T.C. 250 (All.).

—*Gur*, whether agricultural produce.—In the case of *gur*, agricultural process finishes when sugar-cane is harvested and brought home and preparation of *gur* from it is no continuation of the agricultural process, howsoever wide a meaning

may be given to the word "agriculture".—*BHARAT ENGINEERING AND FOUNDRY WORKS v. THE U.P. GOVERNMENT* [1963] 14 S.T.C. 262 (All.).

"Tea", meaning of—*Green leaves whether liable to sales tax.*—Section 2(a) of the Travancore-Cochin General Sales Tax Act, 1125, provided that "agricultural and horticultural produce" shall not be deemed to include tea, coffee etc. *Held*, that the word "tea" is used in the Act, not in the sense it is used in commerce, but in the sense of a product of plant life, the resultant crop of man's labour in the culture of land. Consequently green leaves, just like those leaves after they are processed, are liable to sales tax under the provisions of the Act.—*K. V. VARKEY v. AGRICULTURAL INCOME-TAX AND RURAL SALES TAX OFFICER, PEERMADÉ, AND OTHERS* [1954] 5 S.T.C. 348 (Trav.-Co.).

Tea—Commission agent selling tea of non-resident principal.—Under section 5(v) of the Madras General Sales Tax Act, 1939, exemption from sales tax for tea is limited to tea produced and sold by the resident estate owners and cannot be claimed in regard to tea produced outside the Province by non-resident estate owners and sold within the Province by their accredited representatives or agents. Even if the exemption can be claimed by a non-resident estate owner producing and selling tea this cannot be done by his commission agent inside the Madras State and can only be claimed, by the principal. A commission agent selling goods of a non-resident principal has to pay the tax assessed on him and keep a lien on the moneys acquired by him on behalf of the principal and leave it open to that principal to make applications to the assessing authorities and establish to their satisfaction that either the turnover was less than the minimum prescribed or that the agricultural produce assessed in the hands of the agent was grown by himself or grown on any land in which such a non-resident principal has an interest.—*INDIA COFFEE AND TEA DISTRIBUTING COMPANY LTD. v. THE STATE OF MADRAS* [1955] 6 S.T.C. 47 (Mad.). On appeal see the next para.

—Tea and rubber would be agricultural produce but by reason of an amendment to the Madras General Sales Tax Act, 1939, by Act XXV of 1947, tea was excluded from the definition of agricultural produce in section 2(a). To enable an assessee to get the benefit of the exemption under section 5(v), which was repealed by Act 1 of 1957, two conditions must be satisfied : (1) The tea should have been grown by and on the land in which the seller has one of the interests specified in the sub-section; (2) The sale should be intended for delivery outside the State and delivery should actually be so made. The former condition

is practically the same as the one relevant under section 2(i). Under the provisions of section 14-A it is really the non-resident principal that is assessed to tax and the agent is deemed to be a dealer in respect of his business as a convenient representative for assessment, levy and collection of the tax. The assessment is with reference to the sales on the principal's account and the rates of tax are those applicable to him. The agent is given a statutory right to retain moneys of the principal in his hands a sum equal to the tax assessed or paid. Under section 14-A(ii) the agent is made liable to pay the tax irrespective of the fact whether the amount of turnover of the business was less than the minimum specified in section 3(3) or not. In case the turnover happens to be less than the minimum specified in section 3(3) the principal is given a right to obtain a refund under section 14-A(iv). The assessment and the levy of tax being thus on the principal, he should be enabled to obtain all those exemptions that he would be entitled to obtain had he been resident in the State. Section 14-A not having provided for a refund in cases other than that dealt with under sub-section (iv) of the section cannot be used to imply a right in the taxing authority to tax the whole of the sales regardless of the exemptions. An agent of a non-resident principal would therefore be entitled to the exemption under section 2(i) even when his tax liability is being ascertained in the first instance.—*INDIA COFFEE AND TEA DISTRIBUTING CO. LTD., MADRAS v. STATE OF MADRAS* [1958] 9 S.T.C. 769 (Mad.).

Tobacco.—The expression "agricultural produce" in rule 5(2)(f) of the Hyderabad General Sales Tax Rules, 1950, includes tobacco. *Mohanlal Hargovind Das v. State of Madhya Pradesh* [1955] (6 S.T.C. 687; A.I.R. 1955 S.C. 786; (1956) 1 M.L.J. (S.C.) 5) referred to.—*A. S. KRISHNA & CO. (PRIVATE) LIMITED, GUNTUR v. SALES TAX OFFICER, KHAMMAMETH, AND OTHERS* [1961] 12 S.T.C. 640 (A.P.).

AGRICULTURAL TRACTOR

"Agricultural tractor", whether a motor vehicle.—An agricultural tractor, though its propulsion is by a motor, is not a vehicle within the meaning of section 3(2)(i) of the Madras General Sales Tax Act, 1939, because it is not a thing which is employed to carry either persons or goods on land. The meaning of "vehicle" is a conveyance or a carriage. An agricultural tractor is not used to convey anything and it is employed for agricultural operations and is driven by a driver.—*THE STATE OF MADRAS v. MARSHALL SONS & CO. (INDIA) LTD.* [1954] 5 S.T.C. 305 (Mad.).

Tractor, whether agricultural implement.—The main part in the tractor which provides motive force and which is used not only for agricultural purposes but also for other purposes as a source of power cannot be termed an "agricultural implement" and is therefore not exempt from sales tax. But parts such as harrows, ploughs, tillers, cultivators, seed drills, potonators, sub-soilers, blade terracer etc., which are sold separately or along with the tractor and which are used for agricultural purposes are "agricultural implements" within the meaning of entry 35 of the Schedule to the Pepsu General Sales Tax Ordinance, 2006, and are therefore exempt from sales tax.—*HINDSON AUTOMOBILES, In re* [1955] 6 S.T.C. 660.

Tractor—Whether agricultural machinery.—Tractor is not "agricultural machinery" within the meaning of entry 9 in Schedule B of the Bombay Sales Tax Act, 1953.—*PASHABHAI PATEL & Co. (P.) LTD. v. COLLECTOR OF SALES TAX, MAHARASHTRA STATE* [1964] 15 S.T.C. 32 (Bom.).

Tractor—Whether agricultural machinery.—A tractor, which is nothing but a self-propelled vehicle capable of pulling a load, does not acquire the character of "agricultural machinery or implement" merely because when used on agricultural land it "drives" certain agricultural implements. Where it was not found by the Tribunal that the tractors sold by the assessee were farm tractors which could be used only on agricultural land, sale transactions of tractors were assessable to tax at the rate of seven per cent. under entry 44 of Part II of Schedule II to the Madhya Pradesh General Sales Tax Act, 1958. *Pashabhai Patel & Co. (P.) Ltd. v. Collector of Sales Tax, Maharashtra State* [1964] (15 S.T.C. 32) relied on.—*AGRAWAL BROTHERS v. COMMISSIONER OF SALES TAX, MADHYA PRADESH* [1965] 16 S.T.C. 860 (M.P.).

ANDHRA PRADESH GENERAL SALES TAX ACT

Andhra Pradesh State Act (XXX of 1953), Secs. 53, 54—Legislative powers—Formation of new State—Validity of law imposing sales tax on motor spirit—Powers of Legislature of newly formed State—Laws adapted and modified to facilitate their application to new State—Whether can be amended.—*MOHAMMAD BHUDAN KHAN AND OTHERS v. THE STATE OF ANDHRA PRADESH AND OTHERS* [1959] 10 S.T.C. 263.

—Exemption—Notification exempting tobacco and its products—Sale of cigarettes—Packing materials made of cardboard and dealwood—Whether subject of sale—Question of fact—Duty of Sales Tax Officer.—*HYDERABAD DECCAN CIGARETTE FACTORY v. STATE OF ANDHRA PRADESH* [1966] 17 S.T.C. 624 (S.C.).

Andhra Pradesh General Sales Tax Act (6 of 1957)—Sections 2(1)(b), 14, 19, 20—Reassessment—Appellate and revising authorities—Rule conferring power of reassessment on such authorities—Whether repugnant to provisions of Act and *ultra vires* Government—Scope of the power conferred on the appellate and revising authorities.—*MANEPALLI VENKATANARAYANA AND OTHERS v. THE STATE OF ANDHRA PRADESH AND OTHERS* [1959] 10 S.T.C. 524.

—Secs. 2(1) (b), 4, 5A—Sales Tax Authorities—Assessing authority—Appointment of Special Commercial Tax Officer (Evasions)—Legality—Whether there is conflict of jurisdiction—Whether notification regarding appointment infringes Article 14, Constitution of India—Additional tax imposed by section 5A—Whether violates Article 14—*Andhra Pradesh General Sales Tax Rules, 1957, Rules 7, 8, 9*—Notification G.O. Ms. No. 1091 dated 10th June, 1957—Constitution of India, Article 14.—*BALUSU ANANDU AND OTHERS v. SPECIAL COMMERCIAL TAX OFFICER (EVASIONS), KAKINADA* [1968] 21 S.T.C. 424.

—Sec. 2(1) (c), (n)—Dealer—Sale—Building contractor—Sale value of materials left over after completion of constructions—Whether liable to tax.—*THE STATE OF ANDHRA PRADESH v. GANNON DUNKERLEY & Co., MADRAS (PRIVATE) LTD.* [1965] 16 S.T.C. 120.

—Secs. 2(1) (c), 5, 11—Commission agent—Nature of liability—Commission agent of more than one principal—Each principal's turnover not exceeding taxable limit—Whether commission agent liable to tax.—*IRRI VEERA RAJU AND OTHERS v. THE COMMERCIAL TAX OFFICER, TADEPALLIGUDEM AND ANOTHER* [1967] 20 S.T.C. 501.

—Sec. 2(1) (e), (n)—Dealer—Distributor and producer of films—Supply of posters and publicity materials to producers—Entries in the accounts—Whether transaction sale—Whether distributor "dealer"—Liability to sales tax.—*RAJSHRI PICTURES PRIVATE LTD. v. THE STATE OF ANDHRA PRADESH* [1955] 16 S.T.C. 348.

—Secs. 2(1) (i-1), 12-A (1) (b)—Legislative competence—Millers who are not dealers but milling rice for hire—Provisions requiring registration and maintenance of registers—Validity—Whether *ultra vires* State Legislature—Whether unreasonable restrictions on right to carry on business or hold property—*Andhra Pradesh General Sales Tax Rules, 1957, Rule 45-A*.—*N. PULLAYYA v. THE GOVERNMENT OF ANDHRA PRADESH* [1968] 21 S.T.C. 291.

—Sec. 2(1) (n), Expl. III—Sale—Definition—Explanation deeming two sales where there are transfers from principal to agent and from agent

to buyer—Whether within legislative competence—“When the goods are transferred”—Meaning of.—SRI TIRUMALA VENKATESWARA TIMBER AND BAMBOO FIRM *v.* COMMERCIAL TAX OFFICER, RAJAHMUNDY [1968] 21 S.T.C. 312 (S.C.).

—Sec. 2(1)(n), Expl. III—Commission agent—Sale of jaggery—Tax on first sale—Explanation III to definition of “sale” in Andhra Pradesh Act—Whether enlarges meaning of “sale”—“Transfer of goods” in the explanation—Whether means delivery only without transfer of ownership—Collection of *dharmam*, *kolagaram*, *valtar*, and sales tax by commission agent—Whether transaction falls under sub-clause (iii) of Explanation III—Sale by commission agent—Whether first sale—Construction of explanation in statutes.—THE STATE OF ANDHRA PRADESH *v.* T. R. SOMARAJU AND OTHERS [1965] 16 S.T.C. 177.

—Secs. 2(1) (n), 7, 21 (4) (a) (iii), Sch. IV, item 5—See [1964] 15 S.T.C. 299.

—Sec. 2(1)(s)—Turnover—Railway freight—Deduction—Freight included in price under agreement—Freight paid by buyer allowed as deduction in seller's bill—Whether can be included in turnover—Decision of Sales Tax Appellate Tribunal—Whether binding on Sales Tax Authorities—Andhra Pradesh General Sales Tax Rules, 1957, Rule 6.—THE STATE OF ANDHRA PRADESH *v.* HYDERABAD ASBESTOS CEMENT PRODUCTS LIMITED, HYDERABAD [1968] 21 S.T.C. 267.

—Secs. 5, 9—See [1963] 14 S.T.C. 742 (S.C.) under EXEMPTION.

—Sec. 5(1)—Assessment—Rate of tax—Wholesale dealers in biscuits and chocolates—Whether liable to higher rate of tax—Interpretation of words “any other place” in proviso to section 5(1), Andhra Pradesh Act—Principle of *ejusdem generis*—Whether should be applied.—THE STATE OF ANDHRA PRADESH *v.* T. T. KRISHNAMACHARI & Co. [1962] 13 S.T.C. 10.

—Sec. 5(2)(a), Sch. I, item 66—Inter-State sales—Rice obtained from paddy subjected to tax and rice not so obtained taxed at different rates under Andhra Pradesh Act—Rate of tax on inter-State sales of rice—“Subject to tax generally”—Meaning of—Interpretation of statutes when there are two possible constructions—Central Sales Tax Act (74 of 1956), Sec. 8—THE STATE OF ANDHRA PRADESH *v.* ORUGANTI VENKATESWARLU & BROS. AND OTHERS [1967] 20 S.T.C. 340.

—Sec. 5(3), Sch. III—Millets—Whether include wheat—Whether wheat is subject to multiple

point tax.—PULLAGURA SUBBAIAH CHETTY AND BROTHERS *v.* THE STATE OF ANDHRA PRADESH [1962] 13 S.T.C. 735.

—Sec. 5(5), Sch. III, item 12—Double taxation—Butter and ghee—Whether same goods—Conversion of butter into ghee and sale of ghee—Last purchaser of butter and ghee made liable to tax—Legality.—G. BALIAH SETTY, B. SATYANARAYANA & Co. *v.* THE STATE OF ANDHRA PRADESH [1962] 13 S.T.C. 726.

—Sec. 5-A—Interpretation of statutes—Andhra Pradesh General Sales Tax (Amendment) Act (16 of 1963)—When came into force—Effect of assent of President subsequent to date of coming into force—Section 5-A, Andhra Pradesh Act, imposing additional turnover tax—Validity—Whether violative of Article 14, Constitution of India—Inability to collect sales tax from buyer on account of retrospective operation of Act—Whether invalidates law.—THE GUNTUR DISTRICT CO-OPERATIVE MARKETING SOCIETY LTD. *v.* THE STATE OF ANDHRA PRADESH AND ANOTHER [1967] 20 S.T.C. 476.

—See also [1968] 21 S.T.C. 424.

—Sec. 6, Sch. III—Coconuts—Meaning of—Fully grown coconut with well developed kernel containing water—Whether tender or dried coconut—Liability to tax—Maintainability of petition for writ of *certiorari*.—SRI KRISHNA COCONUT Co. *v.* COMMERCIAL TAX OFFICER, AMALAPURAM [1965] 16 S.T.C. 511.

—Sec. 6, Sch. IV, item 3-C (as it stood before 1st August, 1963)—Single point tax—Groundnuts—Purchase tax—Sale by decorticating miller to crushing miller—Payment of tax by crushing miller—Whether power to tax comes to an end—Whether tax can be levied on decorticating miller.—JOWLI SUNKIAH & Co. *v.* COMMERCIAL TAX OFFICER, NANDYAL, AND ANOTHER [1968] 21 S.T.C. 300.

—Sec. 6, Sch. IV, item 6—Inter-State sales—Purchase of raw hides and skins in Andhra Pradesh State for tanning in Madras State—Tanning, whether consumption within Explanation to Article 286 (1)(a)—Whether purchase tax is leviable—Whether sale occasions movement of goods and falls under section 3(a), Central Sales Tax Act, 1956.—SHAFEEQ SHAMEEM AND Co. AND ANOTHER *v.* THE STATE OF ANDHRA PRADESH AND OTHERS [1964] 15 S.T.C. 828.

—Sec. 7—See under section 2(1)(n).

—Sec. 9—Exemption—Construction of provisions—Notification G. O. No. 1091 Revenue dated 10th June, 1957—Whether confines

exemption to sale of castor oil and does not extend to purchase of castor seeds.—*MANDAVA BALARAMA KRISHNAMURTHI v. THE STATE OF ANDHRA PRADESH AND ANOTHER* [1961] 12 S.T.C. 83.

—See also under section 5.

—Sec. 9(1)—See [1963] 14 S.T.C. 720 under EXEMPTION.

—Sec. 11—See under section 2(1)(c).

—Sec. 12-A (1)(b)—See under section 2(1).

—Sec. 14—Assessment—Return—Penalty—Assessment on the basis of voluntary return submitted after expiry of prescribed period—Imposition of penalty—Legality.—*THE STATE OF ANDHRA PRADESH v. PYARELAL MALHOTRA* [1962] 13 S.T.C. 946.

—See also under section 2(1)(b).

—Sec. 14(1), (2)—Best judgment assessment—Penalty—Whether should be levied when assessment is made—Levy of penalty after completion of assessment—Legality.—*SRI RADHA-KRISHNA & Co. v. THE STATE OF ANDHRA PRADESH* [1962] 13 S.T.C. 117.

—Sec. 14(1), (3), (4)—Best judgment assessment—Turnover escaping assessment—Scope of section 14(1), (3) and (4), Andhra Pradesh Act—Power to make best judgment assessment in reassessment proceedings.—*STATE OF ANDHRA PRADESH v. RAVURI NARASIMLOO* [1965] 16 S.T.C. 54.

—Sec. 14(2)—Penalty—Whether should relate to actual turnover not disclosed or estimated turnover.—*BATTI FAKRUDDIN SAHEB AND SONS v. THE STATE OF ANDHRA PRADESH* [1962] 13 S.T.C. 822.

—Secs. 14(2) and 20—Revision—Deputy Commissioner—Scope of power of revision—Validity of revision based on conjecture.—*STATE OF ANDHRA PRADESH v. T. G. LAKSHMAIAH SETTY & SONS* [1961] 12 S.T.C. 663.

—Secs. 14(4)—Sales tax—Reassessment—Limitation—Period of limitation enlarged before right to reassess is barred—Applicability of new law.—*MUNAGA PERALAH v. THE STATE OF ANDHRA PRADESH* [1962] 13 S.T.C. 26.

—Sec. 14(4)—Reassessment—Turnover which has escaped assessment—Assessing authority to assess escaped turnover—Commercial Tax Officer specially appointed by Government under G. O. Ms. 1091, Revenue—Whether competent to revise assessment made by Deputy Commercial Tax Officer.—*THE STATE OF ANDHRA PRADESH v.*

SEVAK AUTOMOBILES, GOWLIGUDA, HYDERABAD [1962] 13 S.T.C. 45.

—Sec. 14(4)—Penalty—Power to impose penalty—Authority who has made additional assessment under section 14(4), Andhra Pradesh Act—Whether alone competent to levy penalty.—*PALLAPOTHU SARVESWARA RAO v. STATE OF ANDHRA PRADESH* [1962] 13 S.T.C. 122.

—Sec. 14(4)—Escaped turnover—Estimation—Transactions incorporated in return but not entered in books at the time of inspection—Whether escaped assessment—Estimation of turnover by multiplying transactions detected with number of days—Whether arbitrary—Petition for writ of *certiorari*—Existence of alternative remedy—Whether a bar—Constitution of India, Art. 226.—*S. M. YOUSOOF SAHIB v. THE ADDITIONAL COMMERCIAL TAX OFFICER (EVASIONS), VIJAYAWADA, AND ANOTHER* [1967] 19 S.T.C. 210.

—Secs. 14(4), 15—Sales tax—Assessment of escaped turnover—Limitation—Change of law—Period of limitation enlarged before right to reassess is barred—Applicability of new law—Period during which stay order of High Court is in force—Whether should be excluded.—*IMMIDISSETTI RAMAKRISHNAIAH v. THE STATE OF ANDHRA PRADESH* [1962] 13 S.T.C. 914.

—Secs. 14(4), 20—See [1964] 15 S.T.C. 222.

—Secs. 14(4), (4-A), 41—Change of law—Turnover escaping assessment—Repeal of Madras Act by Andhra Pradesh Act—Additional assessments for periods when Madras Act was in force—Whether can be made under Andhra Pradesh Act—Limitation enlarged by Andhra Pradesh Act before assessment became final—Applicability of enlarged period—Madras General Sales Tax Rules, 1939, Rule 17.—*T. K. KHADAR MOHIUDDIN v. STATE OF ANDHRA PRADESH* [1968] 21 S.T.C. 45.

—Secs. 14(4), 30(1)(a), 36—Criminal Court—Jurisdiction—Reassessment without serving notice under section 14(4)—Prosecution for non-payment of tax—Validity of assessment—Whether can be questioned.—*THE PUBLIC PROSECUTOR (A.P.) v. MUKHA SINGH CHANDA AND OTHERS* [1967] 19 S.T.C. 426.

—Secs. 16, 30—Offences—Levy of penalty under section 13 and launching of prosecution under section 30—Whether distinct sanctions and mutually exclusive—Whether offend Article 20(2) of Constitution—Classification of offences under section 30—Whether violates Article 14 of Constitution.—*M. SEETHARAMASWAMY & Co.*

COMMERCIAL TAX OFFICER, ELURU, WEST GODAVARI DISTRICT [1960] 11 S.T.C. 581.

—Sec. 16(4)—Arrears of sales tax—Recovery as arrears of land revenue—When defaulter can be arrested—Arrest by police officer—Legality—Whether arrest can be made only by revenue official—Hindu undivided family—Discontinuance of business—Liability of members for arrears after discontinuance—Andhra Pradesh Revenue Recovery Act (2 of 1864), Secs. 48, 49—Andhra Pradesh General Sales Tax Rules, 1957, Rule 22.—CHALLA KISTAIAH *v.* THE STATE OF ANDHRA PRADESH AND 2 OTHERS [1967] 20 S.T.C. 73.

—Secs. 19, 21(6)—Appeal—Payment of tax—Appeal against assessment and application for stay of collection of tax—First appellate authority granting seven days time to pay tax and subsequently dismissing appeal for non-payment of tax—Legality—Whether proof of payment of tax necessary for preferring second appeal to Tribunal.—KAVUKOTI EKANADHAM AND ANOTHER, *In re* [1967] 20 S.T.C. 242.

—Secs. 19, 21(6)—Appeal to Assistant Commissioner—Dismissal as time-barred—No decision on merits—Appeal to Sales Tax Tribunal against that order—Whether proof of payment of tax necessary.—AKULURU VENKATA SUBRAMANYAM *v.* SPECIAL COMMERCIAL TAX OFFICER (EVASIONS), VIJAYAWADA, AND OTHERS [1967] 20 S.T.C. 249.

—Sec. 19(1)(b)—Appeal to Appellate Assistant Commissioner—Application for stay of collection of tax pending appeal—Discretion of officer—Duty to consider grounds—Summary rejection of application without assigning reasons—Legality—Power of High Court to issue writ.—SHIVNARAYANA LADURAM *v.* THE ASSISTANT COMMISSIONER OF COMMERCIAL TAXES, HYDERABAD, AND ANOTHER [1967] 19 S.T.C. 50.

—Sec. 19—See under section 2(1)(b).

—Sec. 20—Revision—Board of Revenue—Change in law—Whether Board can take into account change in law and revise order passed by Deputy Commissioner which was based on law then prevailing.—ROHTAS INDUSTRIES, LTD. *v.* THE STATE OF ANDHRA PRADESH [1961] 12 S.T.C. 693.

—See also under sections 2(1)(b), 14(2).

—Secs. 20, 23—Board of Revenue—*Suo motu* power of revision—Revision application by assessee—Maintainability—Right of appeal to High Court.—SREE RAMACHANDRA GINNING AND OIL MILLS AND OTHERS *v.* THE STATE OF ANDHRA PRADESH [1967] 19 S.T.C. 354.

—Sec. 20—See under section 14(4).

—Secs. 20(1), 23—Appeal to High Court—Board of Revenue—Revision application by

assessee—Rejection by Board as not maintainable—Whether appeal lies to High Court.—KALLURI BHEEMALINGAM AND OTHERS, *In re* [1967] 19 S.T.C. 116.

—Sec. 21—See under sections 2(1)(n), 19.

—Sec. 21(6)—Appeal—Repeal and re-enactment of statutes—Right of appeal—New law that tax assessed should be paid before entertaining appeal—Initiation of assessment proceedings before amendment—Applicability of new law—Madras General Sales Tax Act (9 of 1939), Sec. 12-A.—K. M. S. LAKSHMANIER & SONS (P.) LTD. (in voluntary liquidation) *v.* THE SALES TAX APPELLATE TRIBUNAL, HYDERABAD, AND TWO OTHERS [1967] 20 S.T.C. 103.

—Sec. 22(7)—Review—High Court—Power of review—Constitution of Tribunal—Whether a ground for review—Order of High Court passed in presence of counsel—Whether amounts to communication.—MADURI MOTORS, SECUNDERABAD *v.* THE STATE OF ANDHRA PRADESH [1962] 13 S.T.C. 673.

—Sec. 25—Board of Revenue—Nature of revisional jurisdiction.—See [1963] 14 S.T.C. 13 under REVISION.

—Secs. 25, 39—Offences—Prosecution for failure to keep and maintain correct accounts—Scope of rules 45(1) and 64—Duty to keep up to date accounts—"Keeping an account", meaning of.—THE PUBLIC PROSECUTOR, ANDHRA PRADESH *v.* NATAKALA JANAKIRAMA CHETTY AND ANOTHER [1959] 10 S.T.C. 568.

—Secs. 28(6), 29(3)—Sales Tax Authorities—Power to seize and confiscate goods—Provisions in Act and Rules—Whether *ultra vires* State Legislature—Search, seizure and confiscation—Whether fall under Entry 54, List II, Schedule VII, Constitution of India—Investiture of power on all officials of department—Whether infringes Articles 14 and 19(1)(f), (g), Constitution of India—Scope of sections 28(6) and 29(3)—Andhra Pradesh General Sales Tax Rules, 1957, Rules 45, 46, 48.—K. S. PAPANNA AND ANOTHER *v.* DEPUTY COMMERCIAL TAX OFFICER, GUNTAKAL, AND OTHERS [1967] 19 S.T.C. 506.

—Sec. 28—Offences—Seizure of accounts and other documents—Scope of power vested in officers—Seizure not proved to be authorised by law—Accused recovering possession of books from officer by use of force—Conviction under sections 147 and 353, Indian Penal Code—Legality.—BHUPALEM VENKATA SUBBAIAH AND OTHERS, *In re* [1960] 11 S.T.C. 850.

—Sec. 28—Sales Tax Authorities—Power of inspection—Scope of power—Continuous watching of business premises—Permissibility—

"Reasonable time", meaning of.—P. LAKSHMANA RAO & SONS v. SPECIAL COMMERCIAL TAX OFFICER (EVASIONS), VIJAYAWADA, AND OTHERS [1962] 13 S.T.C. 860.

—Sec. 30—See under sections 14, 16.

—Sec. 36—See under section 14.

—Secs. 39(2)(1), 41—Arrears of sales tax—Arrears under Madras General Sales Tax Act, 1939—Recovery from legal representative of deceased assessee under Andhra Pradesh General Sales Tax Act—Legality—Validity of rule 23.—ARISSETTI APPALARAJU v. ASSISTANT COMMERCIAL TAX OFFICER, BOBBILI [1961] 12 S.T.C. 398.

—Sec. 41—Dealer—Medical practitioner manufacturing, advertising and selling a specific medicine—Whether dealer—Whether entitled to exemption under G.O. Ms. No. 815 dated 7th April, 1948—Assessments for 1954-55, 1955-56 and 1956-57 made after repeal of Madras Act—Whether valid.—SRI DAMMA PEDDA YELLAPPA, NANDYAL v. THE STATE OF ANDHRA PRADESH [1960] 11 S.T.C. 691.

—Sec. 41—See under section 14.

—Sch. I, item 66—See under section 5(2)(a).

—Sch. III—See under section 5(3) and section 5(5).

—Sch. III, items, 5, 6—"Rice" and "Parched rice"—Whether different articles.—YAMSANI SUDARSANAM v. THE STATE OF ANDHRA PRADESH [1962] 13 S.T.C. 743.

—Sch. III, item 5, Explanation—Coconuts—Copra—Liability of copra to sales tax—Last point of purchase—Meaning of.—KUCHI RAJESWARA SASTRY AND SONS AND ANOTHER v. COMMERCIAL TAX OFFICER, AMALAPURAM [1967] 20 S.T.C. 548.

—Sch. III, item 6—Groundnut—Stage of levy of tax—"When purchased by a miller"—Meaning of—Whether miller should crush groundnut into oil to make him liable to tax.—THE STATE OF ANDHRA PRADESH v. LAKSHMI OIL MILLS, BHONGIR, AND OTHERS [1967] 20 S.T.C. 489.

—Sch. IV, item 3—Oil-seeds—Coriander, ajwan and sompu—Whether oil-seeds.—THE STATE OF ANDHRA PRADESH v. KAJJAM RAMACHANDRAIAH GARI ANANTAIAH [1961] 12 S.T.C. 795.

—Sch. IV, item 3C—See under section 6.

—Sch. IV, item 5—See under section 2(1)(n).

—Sch. IV, item 6—See under section 6.

—Sch. V—"Tobacco and all its products"—Whether includes crushed tobacco stalks.—See [1963] 14 S.T.C. 1 under EXEMPTION.

—Sch. V, item 5—Exemption—Ready-made garments—Whether textiles and entitled to exemption.—M. A. RAHIM v. DEPUTY COMMERCIAL TAX OFFICER, LORD BAZAR, CIRCLE I, HYDERABAD [1960] 11 S.T.C. 355.

—Sch. 5, item 7—Tobacco—Zarda—Whether a product of tobacco and entitled to exemption—Central Excises and Salt Act, 1944—Additional Duties of Excise (Goods of Special Importance) Act, 1957.—J. SHAMDAS v. STATE OF ANDHRA PRADESH [1967] 19 S.T.C. 412.

ANDHRA PRADESH STATE

States reorganisation—Preservation of pre-existing sales tax laws in Telengana and Andhra areas—Transactions of sale involving movement of goods from one area to another—Whether inter-State sales.—After the formation of the State of Andhra Pradesh, the Hyderabad General Sales Tax Act, 1950, continued to be operative in the Telengana area and the Madras General Sales Tax Act, 1939, in the rest of the territory comprised within that State. The question arose whether the transactions of sale involving the movement of goods from the Telengana area into the Andhra area would be deemed to be inter-State sales within the meaning of Article 286 of the Constitution: *Held*, that the movement of goods across a State border is the very essence of inter-State trade and commerce and that the preservation of the pre-existing sales tax laws by reason of section 119 of the States Reorganisation Act, 1956, had not the effect of constituting the movement of goods from one area of the State into another area an inter-State transaction. The territory of the State of Andhra Pradesh being one, the transactions of sale were intra-State sales and not inter-State sales.—MUKUNDAS v. STATE OF ANDHRA PRADESH [1960] 11 S.T.C. 420 (A.P.).

Formation of Andhra State—Levy of tax on sale of yarn by Madras Government—Second levy by Andhra State—Legality—Whether Sales Tax Act as applied to Andhra State new Act for purposes of Article 286(3).—When the Madras Act provides for a single levy on successive sales of yarn, it can have only application to sales in the State of Madras, as it would be incompetent to the Legislature of Madras to enact a law to operate in another State. Section 53 of the Andhra State Act, 1953, merely provides that the laws in existence in the territories which were constituted into the State of Andhra should continue to operate as before. The levy of tax on sale of yarn by the Andhra State is not therefore illegal, even though the Madras Government had already imposed a tax on the sale within that State. The Madras Act as applied to the Andhra State is not

a new Act for purposes of Article 286(3). The Madras Act was in force in the territories which now form part of the Andhra State until 1st October, 1953, and thereafter that Act continues to be in operation by force of section 53 of the Andhra State Act. Moreover, the Madras Act became operative in the new State of Andhra not under any law passed by the Legislature of the State of Andhra but under section 53 of a law enacted by Parliament and therefore Article 286(3) has no application.—*M. P. V. SUNDARAMIER & Co. AND OTHERS v. THE STATE OF ANDHRA PRADESH AND ANOTHER* [1958] 9 S.T.C. 298 (Supreme Court).

—*Hides and skins—Licence for 1953-54—Whether dealer entitled to concession of single point taxation in respect of sales to dealers in Madras after formation of Andhra State—Effect of section 53, Andhra State Act (XXX of 1953).*—The fact that after the formation of the Andhra State, by virtue of section 53 of the Andhra State Act, 1953, the same set of laws continued to be operative both in the States of Madras and Andhra does not support the contention that a dealer in hides and skins holding a licence for 1953-54 is entitled to the benefit of single point taxation even in regard to sales to dealers in Madras State after 1st October, 1953. After the emergence of the State of Andhra the privileges attached to the licence issued to a dealer are confined to the territory of Andhra. *Sundararamier & Co. v. State of Andhra Pradesh* [1958] (9 S.T.C. 298) referred to.—*SRI PEERA MOHAMMAD MAHAMOOD SAHEB v. THE STATE OF ANDHRA PRADESH* [1960] 11 S.T.C. 456 (A.P.).

APPEALS

(In general)

Right of appeal—Scope of provisions.—The words of section 20(1) of the Pepsu General Sales Tax Ordinance, 2006, give the right of appeal to every dealer to whom a notice is given under sub-section (3) of section 11. If the dealer objects to the notice on the ground that he was not liable to pay any tax or that the articles in which he dealt are exempt, the appellate authority is bound to go into these matters and in case it comes to the conclusion that the position taken up by the dealer is correct, it is bound to set aside the order assessing the tax and cancel the notice. To hold that no dealer can prefer an appeal under section 20 unless the notice issued to him under sub-section (3) of section 11 is legal and proper is to defeat the very object of the provisions relating to appeals.—*PIYARE LAL AND OTHERS v. ASSISTANT SALES TAX OFFICER AND ANOTHER* [1952] 3 S.T.C. 7 (Pepsu).

Appeal and memorandum of appeal—Distinction.—The expressions “appeal” and “memorandum of appeal” are used to denote two distinct things. It is not proper to make “appeal” the equivalent of “memorandum of appeal”. The appeal is the judicial examination; the memorandum of appeal contains the grounds on which the judicial examination is invited.—*LAKSHMIRATAN ENGINEERING WORKS LTD. v. ASSISTANT COMMISSIONER (JUDICIAL) I, SALES TAX, KANPUR RANGE, KANPUR, AND ANOTHER* [1968] 21 S.T.C. 154 (Supreme Court).

Entertain—Meaning of.—By the word “entertain” in the proviso to section 9, U.P. Act is meant the first occasion on which the court takes up the matter for consideration. It may be at the admission stage or if by the rules of that Tribunal the appeals are automatically admitted, it will be the time of hearing of the appeal. The words “no appeal.....shall be entertained” in the proviso to section 9 do not denote the filing of the memorandum of appeal but refer to the point of time when the appeal is being considered. Therefore though the memorandum of appeal filed within time is not accompanied by the challan showing payment of tax, if before the appeal is being considered satisfactory proof of the payment of tax is given, then the proviso to section 9 is satisfied.—*LAKSHMIRATAN ENGINEERING WORKS LTD. v. ASSISTANT COMMISSIONER (JUDICIAL) I, SALES TAX, KANPUR RANGE, KANPUR AND ANOTHER* [1968] 21 S.T.C. 154 (Supreme Court).

Determination.—“Determination” in section 19 of the Andhra Pradesh General Sales Tax Act, 1957, is a quasi-judicial determination on the merits of the appeal.—*KAVUKOTI EKANADHAM AND ANOTHER, In re* [1967] 20 S.T.C. 242 (A.P.).

—See also *MD. AMIN BROTHERS v. STATE OF BIHAR* [1951] 2 S.T.C. 63 (Pat.).

Appeals and revision—Whether Act provides two hierarchies of Tribunals functioning simultaneously.—Under the provisions of the Madras General Sales Tax Act, 1939, an order of assessment is treated as a single one subject to an appeal by the taxpayer, the State being left with the limited right to get the orders revised by the competent authority to correct errors in assessment. The powers of revision conferred on the respective authorities may be exercised both for the benefit of the State and the taxpayer. There is nothing in section 12 to warrant an assumption that such powers are given only to protect the interests of revenue and not to protect the interests of the taxpayer as well. Though the statute envisages two sets of remedies, appeals

and revision, the former being available only to the taxpayer and the latter both to the taxpayer and the State, the order of assessment itself is not treated as a severable one with respect to each item of the total turnover. There is no basis in principle or authority for a view, that the Act provides two independent hierarchies of tribunals, one to exercise appellate jurisdiction and the other to exercise revisional jurisdiction in the interests of the State, each functioning independent of the other in their respective fields with reference to the same order of assessment. The provisions of the Act do not warrant the existence of any power in the Deputy Commissioner of Commercial Taxes to interfere under section 12 with an order of the Commercial Tax Officer passed under section 11 when such an order has itself been superseded by the order of the Appellate Tribunal. Where an assessment has been the subject-matter of a final order of the High Court under section 12-B the Deputy Commissioner has no jurisdiction to interfere under section 12.—*THE STATE OF MADRAS v. THE INDIA COFFEE BOARD, BATLAGUNDU* [1960] 11 S.T.C. 1 (Mad.).

Order of assessing authority refusing to grant rebate—Whether appealable.—Under section 9 of the U.P. Sales Tax Act, 1948, an appeal could be filed only against an order of assessment of sales tax. An order of the Assessing Authority refusing to grant a rebate under section 5 could not be said to be an assessment order and therefore an appeal against such an order could not be entertained by the Judge (Appeals). There could not also be a competent revision before the Judge (Revisions) against the appellate order of the Judge (Appeals) refusing to entertain the appeal. Under section 10 of the Act, however, a revision could be entertained by the Judge (Revisions) against the original order under section 5 passed by the Assessing Authority on the ground that no appeal lay against that order. Such an order could also be challenged at a later stage when the final assessment was actually made and an appeal against the order of assessment was presented to the Judge (Appeals). Under section 5 of the Act a dealer is entitled to rebate in all cases where the sale is for delivery outside Uttar Pradesh and the goods are actually delivered outside Uttar Pradesh irrespective of the question whether the buyer resides in or carries on business in Uttar Pradesh or outside Uttar Pradesh. The criterion for the applicability of section 5 is whether, in a particular sale, the goods are actually delivered outside Uttar Pradesh and and whether the sale is for delivery outside Uttar Pradesh.—*SHRI GANESH SUGAR MILLS v. COMMISSIONER OF SALES TAX, UTTAR PRADESH, LUCKNOW, AND ANOTHER* [1960] 11 S.T.C. 426 (All.).

Assessment of escaped turnover by Deputy Commercial Tax Officer—Whether appeal lies to Commercial Tax Officer.—Rule 13(1) of the Madras General Sales Tax Rules, 1939, specifically makes any “original” order of the assessing authority appealable. An order under rule 17(1) passed by the Deputy Commercial Tax Officer, who is the assessing authority under section 2(a)(2) of the Madras General Sales Tax Act, 1939, assessing the assessee afresh to include both the original turnover as well as the turnover that has escaped assessment is an original order of assessment and is therefore appealable under rule 13(1) subject to the conditions specified in section 11.—*THE STATE OF MADRAS v. S. V. SHANMUGHAM & Co.* [1960] 11 S.T.C. 277 (Mad.).

Finding in remand order—Whether can be challenged before higher appellate authorities.—If a remand order is not appealable, an assessee would not be precluded, in an appeal later filed, from challenging before the higher appellate authority the correctness of the conclusions arrived at in the remand order. The assessee, who was assessed to sales tax after rejection of the returns furnished by him, appealed against the assessment claiming certain exemptions. The Appellate Assistant Commissioner set aside the assessment and remanded the case for fresh disposal but he observed in the appellate order that the account books produced by the assessee were not acceptable. The Sales Tax Officer thereupon made fresh enquiries and, after exempting certain sales, again assessed the assessee to sales tax. The assessee appealed to the Appellate Assistant Commissioner but his appeal was dismissed. On further appeal, the Sales Tax Appellate Tribunal directed the officer to examine the assessee’s account books afresh. The question arose whether the Appellate Tribunal was precluded by the passage in the earlier remand order of the Appellate Assistant Commissioner regarding the assessee’s books of account, from again directing the officer to examine the books of account: *Held*, that the assessee could not appeal against the remand order of the Appellate Assistant Commissioner, because there was no assessment order against which he could have appealed. At best, that part of the order against him might be treated as a finding and such a finding, where no appeal could be filed, did not become final, so as to preclude it from being reversed by the Appellate Tribunal, when an appeal was properly filed.—*DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX v. M. D. PHILIP* [1961] 12 S.T.C. 687 (Ker.).

Order under section 16, Madras Act, accepting certain amount by way of composition of offence—Whether appealable—Nature of proceeding under

section 16.—The closing of a case by composition under section 16 of the Madras General Sales Tax Act, 1939, against a dealer who has rendered himself liable to prosecution for violating the mandatory provisions of the Act is a proceeding recorded by the prescribed authority within the meaning of section 11 of the Act, as amended by the Madras General Sales Tax (Andhra Amendment) Act, 1954, and an appeal would therefore lie against an order of composition under section 16.—**THE STATE OF ANDHRA (NOW ANDHRA PRADESH) v. BELLAMKONDA VENKATA SUBBIAH AND ANOTHER** [1957] 8 S.T.C. 309 (A.P.).

Order of confiscation of goods—Option to pay tax and penalty—Whether appeal lies to Appellate Assistant Commissioner.—An order under section 42(3) of the Madras General Sales Tax Act, 1959, stating that if the assessee fails to pay the tax and the penalty mentioned therein, his goods will be confiscated is an order which comes within the scope of section 31 enabling the assessee to file an appeal before the Appellate Assistant Commissioner.—**DEPUTY COMMISSIONER (C.T.), COIMBATORE DIVISION v. S. KRISHNASWAMY CHETTIAR** [1963] 14 S.T.C. 598 (Mad.).

Order granting or refusing to grant refund under proviso to section 4 of Madras Act—Whether appealable to Appellate Assistant Commissioner.—An order granting or refusing refund under the proviso to section 4 of the Madras General Sales Tax Act, 1959, is an order which falls under section 12 and is therefore appealable under section 31.—**DEPUTY COMMISSIONER OF COMMERCIAL TAXES, COIMBATORE DIVISION, COIMBATORE-2 v. M. K. MUTHUSWAMI CHETTIAR AND OTHERS** [1964] 15 S.T.C. 732 (Mad.).

Appeal against decision in writ petition—When appellate court will interfere.—See under WRIT.

First appellate authority—Power to entertain additional grounds different from those taken in memorandum of appeal.—There is no provision in rule 50(2) of the Orissa Sales Tax Rules, 1947, for controlling the exercise of discretion by the first appellate authority while making such further enquiry. Before the first appellate authority there is no opposite party as he is himself the departmental authority and if while hearing appeals he considers that such further enquiry is necessary and allows the assessee-appellant to file additional papers and then passes orders after looking into them, it cannot be said that he exceeded jurisdiction conferred on him by rule 50(2). Therefore the Sales Tax Tribunal will not be right in saying that in disposing of an appeal under section 23(2) of the Orissa Sales Tax Act, 1947, the Assistant Commissioner (first

appellate authority) is not entitled to take into consideration additional grounds of appeal different from those taken in the memorandum of appeal.—**BABULAL CHHAPOLIA v. THE STATE OF ORISSA** [1963] 14 S.T.C. 880 (Ori.). On appeal to Supreme Court this decision was affirmed. See below.

—**First appellate authority—Fresh grounds—Whether can be entertained—Notice to Sales Tax Officer—Whether necessary.**—The assessee, who had sold cloth imported from outside the Orissa State, claimed deduction under old rule 64 of the Orissa Sales Tax Rules but the Sales Tax Officer disallowed the claim. In an appeal before the Assistant Commissioner of Sales Tax the assessee filed a fresh return as well as a copy of the agreement between him and one T. and raised a fresh point that he had worked as an agent of T. and earned a commission on the sales and was not a seller or a purchaser, and the Assistant Commissioner took them into consideration and gave relief to the assessee. The Sales Tax Officer, however, was not represented before the Assistant Commissioner. On appeal, without going into the merits, the Sales Tax Tribunal held that the Assistant Commissioner committed an error of law in allowing a new question to be raised for the first time, which was not mentioned in the original return: *Held*, (i) that the Tribunal was in error in reversing the order of the Assistant Commissioner on the ground that the Assistant Commissioner had no authority to permit an entirely new question to be raised for the first time before him, which would conflict with the return filed by the assessee; (ii) that the Assistant Commissioner in exercising his powers under section 23(2) of the Orissa Sales Tax Act, 1947, was virtually in the same position as the Sales Tax Officer and the Act and the Rules thereunder did not contemplate that a notice should be issued to the Sales Tax Officer if fresh evidence was received and utilised for setting aside the order of the Sales Tax Officer; (iii) that the Assistant Commissioner could take into consideration a revised return. If the appellate authority had the power to allow a new ground to be taken, it did not matter in what manner it allowed it to be taken. Instead of a revised return it could have taken a written statement containing a new ground; (iv) that neither the High Court nor the Supreme Court could give directions to the Tribunal, while dealing with a reference, regarding the manner of disposal of a case after the Tribunal received the judgment on the reference. Decision of the Orissa High Court in *Babulal Chhapolia v. State of Orissa* [1963] (14 S.T.C. 880) affirmed.—**THE STATE OF ORISSA v. BABU LAL CHHAPOLIA** [1966] 18 S.T.C. 17 (S.C.).

Order of inferior tribunal—Whether gets merged in appellate order.—The general rule that an order of an inferior tribunal appealed against and confirmed by a superior tribunal gets merged in the final order on appeal is not of universal application. It cannot be said that wherever there are two orders, one by an inferior tribunal and the other by a superior tribunal, passed on appeal or revision, there is a fusion or a merger of the two orders irrespective of the subject-matter of the appellate or revisional order, and the power of appeal and revision, which are creatures of statute.—*MADURA MILLS CO. v. STATE OF MADRAS* [1962] 13 S.T.C. 124 (Mad.). On appeal to Supreme Court the decision in this case was affirmed. The Supreme Court observed as follows:

—The doctrine of merger is not a doctrine of rigid and universal application, and it cannot be said that wherever there are two orders, one by an inferior tribunal and the other by a superior tribunal, passed in an appeal or revision, there is a fusion or merger of the two orders irrespective of the subject-matter of the appellate or revisional order and the scope of the appeal or revision contemplated by the particular statute. The application of the doctrine depends on the nature of the appellate or revisional order in each case and the scope of the statutory provisions conferring the appellate or revisional jurisdiction.—*THE STATE OF MADRAS v. MADURA MILLS CO. LTD.* [1967] 19 S.T.C. 144 (S.C.).

Additional Judge (Appeals)—Whether competent to hear appeals.—See *BASANTLAL & CO. v. COMMISSIONER OF SALES TAX, UTTAR PRADESH* [1963] 14 S.T.C. 395 (All.).

Appeal against assessment—Dismissal of appeal by Commercial Tax Officer—No further proceedings—Power of Deputy Commissioner to assess escaped turnover.—*THE STATE OF KERALA v. M. APPUKUTTY* [1963] 14 S.T.C. 242 (S.C.).

Appeal against inclusion in turnover—Appeal kept pending—Subsequent suo motu revision of assessment.—The assessee was assessed to sales tax for the assessment year 1952-53 on a turnover which included sales in a canteen primarily run for the benefit of the workers in its factory. The assessee appealed to the Commercial Tax Officer against this inclusion but the officer kept the appeal pending to await the decision of the Supreme Court in *Gannon Dunkerley's* case wherein it was finally laid down that the turnover of sales in a canteen primarily run for the benefit of the workers in a factory did not represent taxable turnover in the course of business liable to sales tax. While this appeal was pending, the Commercial Tax Officer in the exercise of his powers

of revision under section 12 of the Madras General Sales Tax Act, 1939, revised the order of assessment relating to the turnover other than sales in the canteen. The officer however did not deal with the appeal that was then pending before him. Against this order made in revision an appeal was taken to the Sales Tax Appellate Tribunal which was dismissed and from that order of dismissal a revision petition was taken to the High Court which also failed. In the meantime the Madras General Sales Tax Act, 1939, was replaced by the Madras General Sales Tax Act, 1959, and under the provisions of that Act the pending appeal stood transferred to the Appellate Assistant Commissioner who dismissed it in express terms on the ground that he had no jurisdiction to interfere with the original order of assessment which no longer existed in view of the revised order of assessment of the Commercial Tax Officer. The assessee appealed to the Sales Tax Appellate Tribunal which took the view that the revised order having taken the place of the original order of assessment and that revised order having been the subject-matter of appeal to the Tribunal and revision to the High Court, it was not open to the assessee to attack any part of the original order of assessment. On a revision to the High Court: *Held*, (1) that the Tribunal was not right in the conclusion that it reached and that it was open to it to deal with the question whether the canteen sales were liable to sales tax or not; (2) that in view of the decision of the Supreme Court in *Gannon Dunkerley's* case the turnover of the canteen sales was not turnover within the meaning of the Act liable to sales tax. *State of Madras v. India Coffee Board, Battalagundu* [1960] (11 S.T.C. 1) explained.—*MADURA MILLS COMPANY LIMITED v. THE STATE OF MADRAS* [1964] 15 S.T.C. 90 (Mad.).

Right of appeal—Condition imposing payment of tax for admission of appeal.—As the right of appeal is not an inherent right, it cannot come under the category of fundamental rights. It is therefore open to the Legislature to impose limitations on the right of appeal. Consequently the proviso to section 22(1) of the C.P. and Berar Sales Tax Act, 1947, which imposes a condition of payment of the tax with penalty, if any, before an appeal is admitted is not *ultra vires* the State Legislature.—*NEMKUMAR KESRIMAL v. COMMISSIONER OF SALES TAX, MADHYA PRADESH* [1955] 6 S.T.C. 222 (Nag.).

Part payment of tax due—Prayer for admission of appeal—Summary rejection of appeal without giving reasons—Legality.—The assessing officers and appellate authorities acting under the Madhya Pradesh General Sales Tax Act, 1958, exercise

quasi-judicial functions and their procedure must conform to the rules of natural justice. Therefore when an appellant claims the benefit of the proviso to section 38(3) and prays for being permitted to file his appeal on paying a lesser amount of the tax, the appellate authority has to give to the appellant an opportunity of being heard. The appellate authority, however, is not required to embark upon an elaborate enquiry into the grounds put forward to sustain the prayer. All that it ought to do is to give the appellant a fair hearing in order to enable him to place his case in support of the prayer. Since an order of summary dismissal grounded on a rejection of such a prayer is appealable, the appellate authority must also give reasons for the course adopted by it.—**COMMISSIONER OF SALES TAX v. MANGILAL RAMESHWAR DAYAL** [1964] 15 S.T.C. 326 (M.P.).

Payment of tax—Application for stay of collection of tax and penalty—Rejection of application without assigning reasons—Legality.—Under section 31(5) of the Madras General Sales Tax Act, 1959, the Appellate Assistant Commissioner has discretion to stay the collection of tax as well as penalty pending the appeal on such terms as he thinks fit, if the appellant furnishes security to his satisfaction. It is however wrong to assume that the exercise of the discretion is only a naked arbitrary power to reject the applications for stay of recovery of tax pending the appeal. The statute has conferred upon him the power to grant stay and therefore there is also a duty on him to examine and scrutinise the grounds on which the stay is asked for by the appellant. If the duty is ignored or perfunctorily performed, it cannot be said that the power has been properly exercised. Imposition of tax and penalty on an assessee is sometimes heavy and onerous and it is but just and fair that the assessee should get some respite in a proper case until his appeal against the order of assessment is heard and disposed of. The petitioner filed an appeal to the Appellate Assistant Commissioner objecting to the levy of tax and penalty and filed an application for stay of collection of tax and penalty along with the memorandum of appeal. As required by the rules, he filed a security bond and offered as security properties which would cover the total amount of tax and penalty due from him even if he were to fail in the appeal. The application for stay was rejected by the officer without assigning any reasons: *Held*, that the Appellate Assistant Commissioner had failed to exercise his jurisdiction properly and that a *mandamus* must issue directing him to hear afresh the application for stay filed by the petitioner.—**E. KRISHNAPPA**

NAICKER v. DEPUTY COMMERCIAL TAX OFFICER, TIRUVANNAMALAI [1963] 14 S.T.C. 162 (Mad.).

Payment of tax—Appellate authority—Discretionary power to entertain appeal without payment of tax.—The policy of the law is that the Revenue must get the taxes irrespective of the fact that the assessment order is appealed against, but in a deserving case where an assessee is unable to pay the tax assessed and he satisfies the appellate authority of his inability, it may, for reasons to be recorded in writing, entertain the appeal without payment of the tax. In a welfare State it is in the interest of the public that the tax found due must not be withheld from the State merely because the assessment order is appealed against. One of the reasons for this view is that a democratic welfare State gives back to the citizens in various forms quite as much as, if not more than, it demands from them. Normally speaking, parties must be left to have recourse to the procedure prescribed in the Punjab General Sales Tax Act, 1948, for redress of their grievances and they should not be encouraged to treat proceedings under Article 226 of the Constitution as substitutes for the proceedings which are provided by the taxing statute itself. This should be all the more so where the assessee has already approached the Appellate Tribunal.—**JUGAL KISHORE BRIJ MOHAN v. THE STATE OF PUNJAB** [1963] 14 S.T.C. 469 (Punj.).

Payment of tax—Application for stay of collection of tax pending appeal—Discretion of officer—Duty to consider grounds—Summary rejection of application without assigning reasons—Legality—Power of High Court to issue writ.—The discretion conferred on the appellate authority by section 19(1)(b) of the Andhra Pradesh General Sales Tax Act, 1957, is coupled with a duty which the authority can neither ignore nor perfunctorily perform. The discretion has to be exercised properly and with judicious care and not arbitrarily or capriciously. The officer is bound to consider all the circumstances of the case and come to a conclusion whether it is a fit case where in exercise of his discretion he should stay the payment either of the whole amount of tax or part of the amount pending appeal. It is a different thing if after applying his mind he comes to a conclusion that the payment cannot be stayed; but he cannot forget that it is his duty to apply his mind to the facts and circumstances alleged in coming to a conclusion. Where the appellate authority fails to discharge this duty and the appeals are summarily rejected, it is within the powers of the High Court to interfere with the order passed by the authority, in exercise of its extraordinary jurisdiction under Article 226 and direct the

authority to act in accordance with law. Such power is exercisable notwithstanding that an appeal against the order of summary rejection lies to the Appellate Tribunal, because that remedy is not quite handy and is onerous, besides.—*SHIVNARAYANA LADURAM v. THE ASSISTANT COMMISSIONER OF COMMERCIAL TAXES, HYDERABAD, AND ANOTHER* [1967] 19 S.T.C. 50 (A.P.).

Payment of tax—Summary rejection by second appellate authority for non-payment of tax—Whether order of first appellate authority merged in the order of second appellate authority—Competency of revision.—The petitioner's appeal to the Assistant Commissioner of Sales Tax against an assessment of sales tax under the C.P. and Berar Sales Tax Act, 1947, for the period 1957-58 was dismissed. Thereupon the petitioner preferred a second appeal to the Deputy Commissioner of Sales Tax who by a preliminary order called upon the petitioner to pay a part of the tax by a particular date. As the same was not paid the Deputy Commissioner rejected the appeal summarily under rule 55 of the C.P. and Berar Sales Tax Rules, 1947. The petitioner then presented a revision application before the Commissioner and pointed out that the revision application was against the order of the Assistant Commissioner and not against the Deputy Commissioner's order in second appeal. After the reorganisation of the States, for the purposes of section 22 of the Act, the Deputy Commissioner exercised the same powers as that of the Commissioner and therefore if the decision dismissing the appeal of the petitioner was by the Deputy Commissioner acting as Commissioner, no revision could lie. The Deputy Commissioner dealing with the revision application of the petitioner was of the view that even though the second appeal was dismissed by the Deputy Commissioner summarily for non-payment of part of the tax, the order of the first appellate authority merged in the order of the second appellate authority, and no revision could therefore lie: *Held*, that the summary rejection of the appeal of the petitioner by the Deputy Commissioner did not bar a revision application which the petitioner preferred to the Commissioner. *Krishna Flour Mills v. Commissioner of Income-tax, Mysore* [1965] (55 I.T.R. 259), and *Jagmohandas Gokaldas v. Commissioner of Wealth-tax, Bombay* [1963] (50 I.T.R. 578) applied. *Mela Ram and Sons v. Commissioner of Income-tax, Punjab* [1956] (29 I.T.R. 607) distinguished.—*JANATA OIL INDUSTRIES, NAGPUR v. DEPUTY COMMISSIONER OF SALES TAX, EASTERN DIVISION, NAGPUR, AND ANOTHER* [1967] 19 S.T.C. 97 (Bom.).

Payment of tax—Appeal against assessment and application for stay of collection of tax—First

appellate authority granting seven days time to pay tax and subsequently dismissing appeal for non-payment of tax—Legality—Whether proof of payment of tax necessary for preferring second appeal to Tribunal.

—The assessee preferred an appeal to the Assistant Commissioner of Commercial Taxes under section 19 of the Andhra Pradesh General Sales Tax Act, 1957, against an assessment order and also filed an application before that authority to stay collection of the disputed tax amount. The Assistant Commissioner granted to the assessee seven days time to pay the tax amount. The assessee was not able to pay the tax amount within that period and the Assistant Commissioner rejected the appeal on the sole ground of non-payment of the tax amount. The assessee thereupon preferred an appeal to the Sales Tax Appellate Tribunal; but the Tribunal, acting under section 21(6) of the Act, called upon the assessee to pay the amount of tax and file proof of such payment as a condition precedent to entertain the appeal. The assessee filed a petition under Article 226 of the Constitution: *Held*, that the tax payable by the assessee was not determined by the Assistant Commissioner of Commercial Taxes, who rejected the appeal in limine, and therefore section 21(6) was not attracted. "Determination" in section 19 is a quasi-judicial determination on the merits of the appeal. *Held further*, that the order granting seven days time to the assessee to pay the tax on the penalty of the appeal being otherwise rejected was arbitrary, capricious and unreasonable and rendered the right of appeal illusory. [The Tribunal was directed to deal with the case of the assessee on the basis that the order passed by the Assistant Commissioner did not determine under section 19 of the Act the amount of tax payable by the assessee.]—*KAVUKOTI EKANADHAM AND ANOTHER, In re* [1967] 20 S.T.C. 242 (A.P.).

Payment of tax—Dismissal as time-barred—No decision on merits—Appeal to Sales tax Tribunal against that order—Whether proof of payment of tax necessary.—An order of the Assistant Commissioner (Commercial Taxes) rejecting an appeal as time-barred is an appellate order passed under section 19 of the Andhra Pradesh General Sales Tax Act, 1957, confirming the original assessment order and amounts to a confirmation of the tax determined by the original order and hence the appellant has to pay the tax while preferring second appeal to the Sales Tax Tribunal as required by section 21(6) of the Act. *Kavukoti Ekanadham v. The Sales Tax Appellate Tribunal* [1967] (20 S.T.C. 242) distinguished. *Mela Ram and Sons v. Commissioner of Income-tax* [1956] (29 I.T.R. 607) applied.—*AKULURU VENKATA*

SUBRAMANYAM *v.* SPECIAL COMMERCIAL TAX OFFICER (EVASIONS), VIJAYAWADA, AND OTHERS [1967] 20 S.T.C. 249 (A.P.).

Payment of tax—Limitation—Appeal against assessment—Memorandum of appeal along with challan for payment of portion of admitted tax filed in time—Challan for payment of balance filed after expiry of period of limitation—Whether appeal can be rejected.—The last day on which the assessee could file an appeal against an assessment order passed under section 7(3) of the U.P. Sales Tax Act, 1948, was 24th October, 1953. The assessee, who had admitted its liability for payment of Rs. 510 as tax, actually filed the appeal on 12th October, 1953, with a challan for Rs. 443 only. On 27th November, 1953, the assessee presented two challans, one dated 6th October, 1953, for about Rs. 9 and the other dated 26th November, 1953, for about Rs. 58. The Judge (Appeals) held that the appeal did not conform to the requirements of the first proviso to section 9 and rejected it. On a reference under section 11(1): *Held*, that the Judge (Appeals) rightly rejected the memorandum of appeal on the ground that it was not accompanied by satisfactory proof of the payment of the admitted amount of the tax.—*SWASTIKA TANNERY OF JAJMAU v. COMMISSIONER OF SALES TAX* [1963] 14 S.T.C. 518 (All.).

Payment of tax—Failure to file challan along with memorandum of appeal—Certificate of payment of tax issued by Sales Tax Officer filed before appeal taken up for consideration—Whether proper compliance with provisions of the Act—Rule requiring that memorandum of appeal shall be accompanied by challan—Whether mandatory or directory—"Appeal", "entertain", meanings of.—Section 9 of the U.P. Sales Tax Act, 1948, only requires that at the time of the consideration of the appeal, there should be satisfactory proof that the admitted tax has been deposited. Rule 66 of the U.P. Sales Tax Rules, 1948, which requires that the memorandum of appeal should be accompanied by a challan showing deposit in the treasury of the tax admitted by the appellant to be due or of such instalments thereof as might have become payable, lays down one uncontestable mode of proof which the court will always accept. The proviso to section 9 is however general and it provides that the court should accept satisfactory proof. Rule 66 does not therefore exclude the operation of the proviso to section 9 when equally satisfactory proof is made available to the officer hearing the appeal, and it is proved to his satisfaction that payment of the tax has been duly made in time. Rule 66 is only directory and provides only one of the modes of proving that tax has been

duly paid. If the challan was lost the dealer could produce a copy of the challan from the treasury or obtain a certificate from the Treasury Officer or he could obtain from the bank the discharged cheque by which the amount of tax was deposited by him and produce it. A certificate from the Sales Tax Officer is as good proof as the challan from the treasury. All these means of proof will be equally irrefutable. The expressions "appeal" and "memorandum of appeal" are used to denote two distinct things. It is not proper to make "appeal" the equivalent of "memorandum of appeal". The appeal is the judicial examination; the memorandum of appeal contains the grounds on which the judicial examination is invited. By the word "entertain" in the proviso is meant the first occasion on which the court takes up the matter for consideration. It may be at the admission stage or if by the rules of that Tribunal the appeals are automatically admitted, it will be the time of hearing of the appeal. The words "no appeal.....shall be entertained" in the proviso to section 9 do not denote the filing of the memorandum of appeal but refer to the point of time when the appeal is being considered. Therefore though the memorandum of appeal filed within time is not accompanied by the challan showing payment of tax, if before the appeal is being considered satisfactory proof of the payment of tax is given, then the proviso to section 9 is satisfied. The Sales Tax Authority served an order of assessment and the notice of demand on the appellant on April 16, 1966, and the appellant filed on May 16, 1966, within time, an appeal to the Appellate Assistant Commissioner. The memorandum of appeal was not accompanied by a challan showing deposit in the treasury of the tax admitted to be due by the appellant as required by rule 66(2) of the U.P. Sales Tax Rules, 1948. The appellant had, even before the assessment order was made, paid a greater portion of the tax and it deposited the balance of Rs. 99.99 on April 26, 1966, before the appeal was filed. The appellant filed on January 24, 1967, before the Assistant Commissioner a certificate of payment of tax issued by the Sales Tax Officer. By his order dated April 2/3, 1967, the Assistant Commissioner rejected the appeal on the ground that section 9 of the Act read with rule 66(2) had not been complied with since no proof had been given along with the memorandum of appeal that the tax had been paid: *Held*, that the Assistant Commissioner was wrong in rejecting the appeal.—*LAKSHMIRATAN ENGINEERING WORKS LTD. v. ASSISTANT COMMISSIONER (JUDICIAL) I, SALES TAX, KANPUR RANGE, KANPUR AND ANOTHER* [1968] 21 S.T.C. 154 (S.C.).

Payment of tax—Filing of appeal without paying whole of admitted tax—Balance of admitted tax paid subsequently—Maintainability of appeal—The mere presentation of an appeal petition without the necessary documents, will not amount to the preferring of an appeal as contemplated by section 14(1) of the General Sales Tax Act, 1125. If an appeal petition has been filed without proof of payment of tax accompanying it, that appeal can be said to be preferred only when the proof of payment of tax is furnished. Such furnishing of the proof may take place within the period prescribed for preferring the appeal or after the lapse of that period. If the proof of payment of admitted tax is furnished within the period prescribed for filing the appeal no question of not entertaining the appeal arises. If the furnishing of proof happens to be after the expiry of the period prescribed, the question will arise as to whether the appeal should be admitted or not. In such cases the first proviso to section 14(1) will be attracted and the question must be whether there has been sufficient cause for not preferring the appeal within the statutory period. The correct approach is to treat the appeal as having been preferred on the date on which proof of payment of the tax was furnished and then to see whether under the proviso to section 14(1), there was sufficient cause or not to excuse the delay in preferring the appeal.—**GANGADHARAN PILLAI v. SALES TAX OFFICER (RESERVE), ERNAKULAM** [1965] 16 S.T.C. 578 (Ker.).

Payment of tax—Tax admitted to be due—Meaning of.—The admitted tax payable by the dealer under the second proviso to section 20(1) of the Mysore Sales Tax Act, 1957, as it stood before its amendment, was the tax payable on the turnover admitted by him in the return produced by him. The fact that he did not appeal from one part of the assessment order made by the Commercial Tax Officer did not mean that the tax determined by the Commercial Tax Officer in respect of which there was no appeal was tax which the dealer admitted to be due. The tax became payable in that contingency in respect of that matter, not because there was an admission by the dealer but because there was a determination by the Commercial Tax Officer. There is a distinction between an admission and an adjudication.—**THE STATE OF MYSORE v. A. K. KHOJA AND OTHERS** [1968] 21 S.T.C. 354 (Mys.).

—**Appeal challenging common order assessing petitioner and rejecting application for cancellation of registration certificate—Whether prior payment of tax necessary for admitting appeal.**—The Sales Tax Officer by a common order assessed the petitioner to sales tax and also rejected an application

for cancellation of the registration certificate and the petitioner thereupon filed an appeal against that order. The question arose whether prior payment of tax under the proviso to section 22 (1) of the C.P. and Berar Sales Tax Act, 1947, was necessary for admitting the appeal: *Held*, that if an appeal involved a challenge to an order of assessment, with or without penalty, the proviso would come into effect. The question of the cancellation of the registration certificate might be a ground for exemption from assessment but it could not be said that because this order was also under challenge, the appeal was not against the assessment of sales tax. Therefore prior payment of tax was necessary for admitting the appeal.—**DAURAM v. ASSISTANT COMMISSIONER OF SALES TAX, BILASPUR, AND ANOTHER** [1958] 9 S.T.C. 673 (M.P.).

Payment of tax—Admitted amount of tax—Whether should be deposited within period of limitation—Applicability of section 5, Indian Limitation Act (9 of 1908)—An appeal under sec. 9 of the U.P. Sales Tax Act, 1948, is not maintainable unless the entire admitted amount of tax is deposited by the appellant within the period prescribed for filing the appeal against an order of assessment of sales tax. Section 5 of the Indian Limitation Act, 1908, which provides for condoning the delay in filing an appeal or application is not attracted to a case where the question is whether the delay in depositing the admitted tax should be condoned. **OAK, C.J.**—The observation of the Supreme Court in *Lakshmiratan Engineering Works Ltd. v. Assistant Commissioner, Kanpur* [1968] 21 S.T.C. 154 at page 163 that satisfactory proof must be presented that the tax was paid within the period of limitation available for the appeal cannot be dismissed as a passing remark. That is the declaration of the Supreme Court as regards the deposit of admitted tax. Under Article 141 of the Constitution, that declaration of law is binding on the High Court. **PATHAK, J.**—The Legislature envisages that before a dealer can have his appeal entertained he must comply with the notice of assessment and demand at least to the extent of the tax admitted by him to be due, and he must show that he has done so before the appeal is entertained. The admitted tax, therefore, must be paid within a period of 30 days from the date of service of the notice of assessment and demand. An assessment order dated 29th August, 1966, was served on the petitioner on 5th September, 1966, and the petitioner filed the appeal on 19th September, 1966. Out of the admitted tax of Rs. 1,612.91, the petitioner deposited a sum of Rs. 1,610.91 before the appeal was filed and an additional sum of

Rs. 5 in January, 1967. The last day of limitation for filing the appeal and for depositing the admitted tax was 5th October, 1966. The petitioner filed an application under section 5 of the Indian Limitation Act, 1908, for condoning the delay in depositing the admitted tax. The Assistant Commissioner held that section 5 of the Indian Limitation Act, 1908, was not attracted to the case and dismissed the appeal as not maintainable: *Held*, that the appeal was not maintainable inasmuch as the admitted tax was not paid by the petitioner within the period of limitation available for the appeal and section 5 of the Indian Limitation Act, 1908, did not apply to the case.—*JANTA CYCLE AND MOTOR MART v. THE ASSISTANT COMMISSIONER (J.) III, SALES TAX, KANPUR RANGE, KANPUR, AND ANOTHER* [1968] 22 S.T.C. 94 (All.).

Payment of tax—Condonation of delay—Payment of tax as required by section 24(1), Bihar Act—Discretion of Assistant Commissioner of Commercial Taxes—Refusal to entertain appeal by condoning delay in depositing tax and refusal to exercise power of review—Order of Board of Revenue restoring appeal—Legality.—For the period 1st April, 1956, to 30th July, 1958, the assessee was assessed to sales tax on 16th March, 1960, under section 13(5) of the Bihar Sales Tax Act, 1947. Being aggrieved by that order the assessee preferred an appeal to the Assistant Commissioner of Commercial Taxes on 16th September, 1960, but the assessee had not deposited by that time twenty per cent. of the tax levied on him as required by section 24(1). The Assistant Commissioner called upon the assessee to give proof of the payment of the required amount of tax on 11th October, 1960, and also reminded him in that respect on 9th November, 1960. On 10th December, 1960, the assessee produced a challan before the Assistant Commissioner in proof of payment of Rs. 100 towards the sales tax and asked for time to pay the balance. The Assistant Commissioner did not feel satisfied with the grounds made out by the assessee, refused to grant him any further time and struck off the memorandum of appeal on the same day. Before 5th January, 1961, the assessee paid the balance of the twenty per cent. of the tax and approached the Assistant Commissioner with an application to review the order passed by him on 10th December, 1960. The Assistant Commissioner refused to review his previous order. The assessee went in revision before the Deputy Commissioner of Commercial Taxes but without success. He then approached the Board of Revenue where he got an order in his favour on 28th December, 1961, by which the appeal stood restored. On a reference under

section 25(1) of the Act: *Held*, (1) that section 24(2) gives to the Assistant Commissioner the power to exercise such discretion and that discretion is in relation to the presentation of the memorandum of appeal and its admission for hearing which also includes the payment of the required amount of tax. There is virtually no difference between excusing the delay in presentation of appeal and extending time for completing the presentation either by payment of the required amount of tax or by furnishing necessary particulars in the prescribed form of appeal. In one case, the discretion is exercised after the period of limitation and in the other, before the end of that time. The purpose and effect is the same in both the cases. Filing a defective appeal within the period of limitation is not a proper presentation. When the defects are removed, the appeal comes to the stage of being "entertained". If by that time the period of limitation expires and the appeal is entertained, the appellate authority does so on condonation of the delay in its discretion; (2) that the order of the Assistant Commissioner dated 10th December, 1960, striking off the appeal for not complying with the requirements set out in the proviso to section 24(1) was valid in law, but that order was revisable by the higher authorities and was also reviewable by the Assistant Commissioner; (3) that the order of the Board of Revenue dated 28th December, 1961, restoring the appeal and directing it to be heard on merits was in accordance with law.—*COMMISSIONER OF SALES TAX, BIHAR v. GANESH ABHUSHAN BHANDAR* [1968] 22 S.T.C. 12 (Pat.).

Right of appeal—Change of law—Initiation of assessment proceedings before amendment but completion of assessment after amendment—Applicability of new law.—A right of appeal is not merely a matter of procedure. It is a matter of substantive right. This right of appeal from the decision of an inferior tribunal to a superior tribunal becomes vested in a party when proceedings are first initiated in, and before a decision is given by, the inferior court. A pre-existing right of appeal is not destroyed by an amendment if the amendment is not made retrospective by express words or necessary intendment. The fact that the pre-existing right of appeal continues to exist must, in its turn, necessarily imply that the old law which created that right of appeal must also exist to support the continuation of that right. As the old law continues to exist for the purpose of supporting the pre-existing right of appeal that old law must govern the exercise and enforcement of that right of appeal and there can then be no question of the amended provision preventing the

exercise of that right. A provision which is calculated to deprive an assessee of the unfettered right of appeal cannot be regarded as a mere alteration in procedure. For the purposes of the accrual of the right of appeal the critical and relevant date is the date of initiation of the proceedings and not the decision itself. Under the proviso to section 22(1) of the Central Provinces and Berar Sales Tax Act, 1947, as it stood prior to its amendment by the Central Provinces and Berar Sales Tax (Second Amendment) Act (LVII of 1949) an aggrieved assessee was entitled to appeal provided he paid such amount of tax as he might admit to be due from him. Under the proviso to section 22(1) as amended, the appeal had to be accompanied by satisfactory proof of payment of the tax in respect of which the appeal had been preferred. The assessment proceedings of the assessee-company were initiated prior to the amendment of the section but the order of assessment was made after the amendment. The assessee contended that as the amendment had not been made retrospective its right of appeal under the original section 22(1) remained unaffected and that as it did not admit anything to be due, it was not liable to deposit any sum along with its appeal to the Sales Tax Commissioner. The Commissioner rejected the appeal on the ground that it had not been accompanied by any proof of payment of the tax assessed as required under the amended proviso. The Board of Revenue and the High Court declined to direct the Commissioner to admit the appeal: *Held*, by the Supreme Court that the imposition of the restriction by the amendment of the section could not affect the assessee's right of appeal from a decision in proceedings which commenced prior to such amendment and which right of appeal was free from such restriction under the section as it stood at the time of the commencement of the proceedings. Consequently the assessee's appeal should not have been rejected on the ground that it was not accompanied by satisfactory proof of the payment of the assessed tax. As the assessee did not admit that any amount was due by it, it was entitled to file its appeal without depositing any sum of money. The new requirement in the proviso to section 22(1) could not be said merely to regulate the exercise of the assessee's pre-existing right but in truth whittled down the right itself and could not be regarded as a mere rule of procedure.—*HOOSAIN KASAM DADA (INDIA) LTD. v. THE STATE OF MADHYA PRADESH AND OTHERS* [1953] 4 S.T.C. 114 (S.C.).

Rule in Hoosain Kasam Dada's case—*When can be applied*.—The decision of the Supreme

Court in *Hoosain Kasam Dada (India) Ltd. v. The State of Madhya Pradesh and Others* [1953] (4 S.T.C. 114; [1953] S.C.R. 987) proceeded on the ground that when a *lis* commences, all rights get crystallised and no clog upon a likely appeal can be put, unless the law is made retrospective, expressly or by clear implication. Therefore, in a particular case, unless it could be proved conclusively that the *lis* had commenced before the amendment of the law, the rule in *Hoosain Kasam Dada's* case could not apply.—*VITTHALBHAI NARANBHAI PATEL v. COMMISSIONER OF SALES TAX, MADHYA PRADESH, NAGPUR* [1961] 12 S.T.C. 219 (S.C.).

—*Right to appeal on payment of tax admitted to be due*—*New law that tax assessed should be paid*—*Submission of return before amendment*—*Old law applies*—*Second appeal conferred on assessee by amendment of rules after submission of return*—*Applicability of old law to second appeal*.—Where an assessee filed returns in May, 1948, and appealed against the assessment the provisions of the Act as regards payment of tax that were applicable to him were section 22(1) of the C.P. and Berar Sales Tax Act, 1947, as it stood prior to its amendment by Act LVII of 1949, and not section 22(1) after its amendment by that Amendment Act. Though the amended section 22(1) made a clear distinction between a first appeal and a second appeal, the unamended section was wide enough to embrace both. Therefore, although the rules providing a second appeal were made only subsequent to the filing of the returns, they could be read along with the provisions of the old section. The assessee was therefore entitled to prefer a second appeal before the Commissioner and contend that he was not bound to deposit the tax assessed on him except the amount which was admitted to be due by him. *Hoosain Kasam Dada (India) Ltd. v. The State of Madhya Pradesh* ([1953] S.C.R. 987; 4 S.T.C. 114) referred to.—*RAOJIBHAI AMBALAL AND BROTHERS v. COMMISSIONER OF SALES TAX, M.P., NAGPUR, AND OTHERS* [1956] 7 S.T.C. 552 (Nag.).

—*Right to appeal on payment of tax admitted to be due*—*New law that tax assessed should be paid*—*Submission of return before amendment*—*Applicability of old law*.—Where an assessee filed returns of turnover before the proviso to section 22(1) was amended by Act LVII of 1949 the old section was applicable to him and he was therefore entitled to prefer the appeal if he deposited the amount of tax admitted as due from him. The appeal in such a case should not be rejected on the ground that the matter was governed by the new section under which the appeal should

be accompanied by satisfactory proof of the payment of the assessed tax.—**KILACHAND DEOCHAND AND CO. v. COMMISSIONER OF SALES TAX, MADHYA PRADESH AND OTHERS** [1956] 7 S.T.C. 823 (Nag.).

Appeal and revision whether vested rights—Change of law.—The general rule is that statutes are presumably prospective in operation unless the contrary is very plainly and unequivocally expressed or necessarily implied. This is based on the principle that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation otherwise than as regards matters of procedure, unless an intention so to do has been expressed clearly or by necessary implication. This rule regarding vested rights is not confined to substantive rights but extends equally to remedial rights, their nature and content. An appeal is not a mere matter of procedure. To disturb an existing right of appeal is not a mere alteration in procedure and an intention to interfere with, or to impair or imperil, an existing right of appeal cannot be presumed unless such intention is clearly manifested by express words or necessary intendment. The impairment of a right of appeal by putting a new restriction thereon or imposing a more onerous condition (the payment of a higher court-fee) is not a matter of procedure only. It impairs or imperils a substantive right and an enactment which does so is not retrospective unless it says so expressly or by necessary intendment. Prior to the commencement of the Madhya Pradesh General Sales Tax Act, 1959, an assessee had, under the Central Provinces and Berar Sales Tax Act, 1947, a right to file two successive appeals against any original order of assessment, and a revision to the Board of Revenue against any order passed in second appeal. The second appeal lay to the Deputy Commissioner of Sales Tax on payment of a court-fee of Rs. 5 only. Under the new Act the second appeal lay to the Board for which a court-fee of Rs. 25 had to be paid. The new Act did not provide the further remedy by way of revision against an order passed in second appeal, but an aggrieved assessee could require the Board to refer to the High Court questions of law arising out of the order passed in second appeal. In respect of periods of assessments prior to 2nd November, 1956, the petitioners had filed their returns prior to the commencement of the new Act and notices were also issued to them before that date. The Deputy Commissioner of Sales Tax declined to entertain second appeals against orders of assessment of sales tax on the ground that under

the new Act the Board of Revenue had jurisdiction to entertain such appeals: *Held*, that the “lis” in the present case had arisen before the new Act came into force and the right to the remedy available to the petitioners under the repealed Act at the time when the “lis” arose had not been taken away by the provisions of the new Act. Therefore the Deputy Commissioner was not justified in declining to entertain the second appeals. The proviso to sub-section (1) of section 52 of Act 2 of 1959 which saves all rights acquired, including a right of appeal, emphasises that there was no intention of abrogating or impairing such a right. Sub-section (3), which provides that any second appeal pending at the commencement of the Act shall continue to be governed by the provisions of the repealed Act, has been enacted *ex abundanti cautela*. Even without that enactment, the position would not be different. A right of revision under section 22(5) of the repealed Act was in the nature of a vested right which could not be taken away or impaired save by express words or necessary implication.—**NATHULAL CHHOTELAL v. DEPUTY COMMISSIONER OF SALES TAX AND ANOTHER** [1962] 13 S.T.C. 853 (M.P.).

—*Assessment for periods prior to Constitution*
—*Disposal of appeal after Constitution—Whether appeal should be decided by applying Article 286.*—The assessee was assessed to sales tax under section 4(1) read with section 2(g) of the Bihar Sales Tax Act, 1947, for two periods prior to 1949-50 in July, 1949, and September, 1949, respectively. In April, 1950, after the Constitution of India had come into force, the Commissioner disposed of the appeals preferred by the assessee against the assessment orders. The question was whether the Commissioner was bound to decide the appeals applying the provisions of Article 286 of the Constitution: *Held*, that the levy of sales tax upon the assessee was made and his liability to pay sales tax had accrued long before the Constitution came into force, that Article 286 of the Constitution had no retrospective force and the assessments of sales tax upon the assessee under section 4(1) read with section 2(g) were legally valid and that therefore the Commissioner was not bound to decide the appeals according to Article 286 of the Constitution.—**TATA IRON AND STEEL COMPANY LTD. v. THE STATE OF BIHAR** [1956] 7 S.T.C. 158 (Pat.).

—*Madras General Sales Tax Act (1 of 1959), Section 31(3).*—An assessee was assessed to sales tax under the Madras General Sales Tax Act, 1939. During the pendency of his appeal to the Commercial Tax Officer, the Madras General

Sales Tax Act, 1959, came into force and his appeal was transferred, under the provisions of section 61(2) of the 1959 Act, to the file of the Appellate Assistant Commissioner, who enhanced the assessment: *Held*, that the assessee had a vested right at the time when the 1959 Act came into force to prevent the Commercial Tax Officer from enhancing the assessment in the course of the appeal preferred by him. However there was always the peril of the Commercial Tax Officer, who was also the revising authority, revising the assessment to his prejudice in exercise of the revisional power, but that peril effectively disappeared when under the 1959 Act, the revisional power was conferred upon the Deputy Commissioner of Commercial Taxes and not upon the Appellate Assistant Commissioner. Therefore the interference by the Appellate Assistant Commissioner with the assessment order passed by the Deputy Commercial Tax Officer to the prejudice of the assessee, in the purported exercise of his appellate power, was clearly violative of the assessee's vested rights.—DEPUTY COMMISSIONER OF COMMERCIAL TAXES *v.* M. BALASUNDARAM AND COMPANY [1963] 14 S.T.C. 996 (Mad.).

Change of law—Appellate Tribunal—Power to enhance turnover—Assessment made when 1939 Act was in force—Act I of 1959 coming into force during pendency of appeal to Commercial Tax Officer—Appeal transferred to Appellate Assistant Commissioner who reduced turnover—Appeal to Appellate Tribunal by assessee—Power of Tribunal to enhance turnover—Madras General Sales Tax Acts (IX of 1939) and (I of 1959), Sec. 61(1).—DEPUTY COMMISSIONER OF COMMERCIAL TAXES, MADRAS DIVISION *v.* SRI SWAMI AND COMPANY [1962] 13 S.T.C. 468 (Mad.).

Change of law—Appeal to Appellate Assistant Commissioner of Commercial Taxes—Assessment made when 1939 Act was in force—Repeal of 1939 Act by Act I of 1959—Power of appellate officer to enhance turnover.—The Appellate Assistant Commissioner of Commercial Taxes has no power to enhance a turnover in an appeal before him by an assessee aggrieved by an order of assessment made prior to the date on which the Madras General Sales Tax Act, 1959, came into force, inasmuch as the appellate power of the Appellate Assistant Commissioner has to be exercised, by virtue of section 61 of the 1959 Act as amended by Amendment Act 10 of 1963, as if the 1959 Act had not been passed, and under the 1939 Act the appellate authority, whatever his designation might be, had no power to enhance the assessment.—STATE OF MADRAS *v.* LATHEEF HAMEED & Co., MADRAS-3 [1968] 21 S.T.C. 476 (Mad.).

Change of law—Repeal and re-enactment of statutes—Right of appeal—New law that tax assessed should be paid before entertaining appeal—Initiation of assessment proceedings before amendment—Applicability of new law.—The assessee was assessed to sales tax for the years 1954-55 and 1955-56 under the Madras General Sales Tax Act, 1939, and the proceedings were initiated by the Commercial Tax Officer by notices dated 14th March, 1957. The assessee preferred appeals to the Assistant Commissioner of Commercial Taxes who by his order dated 9th April, 1962, confirmed the assessments made by the Commercial Tax Officer. The assessee thereupon appealed to the Sales Tax Appellate Tribunal, which insisted on proof of payment of tax as required by section 21(6) of the Andhra Pradesh General Sales Tax Act, 1957, for entertaining the appeal. The assessee filed petitions under Article 226 of the Constitution: *Held*, (1) that the right of appeal is a substantive right and not a matter of mere procedure, and that for the purposes of the accrual of the right of appeal the crucial and relevant date is the date of initiation of the proceedings and not the decision itself. A pre-existing right of appeal is not destroyed by an amendment if the amendment is not made retrospective by express words or necessary intendment and the fact that the pre-existing right of appeal continues to exist must, in its turn, necessarily imply that the old law which created that right of appeal must also exist to support the continuation of that right; (2) that, in the present case, the crucial date was 14th March, 1957, when the law in force was the Madras General Sales Tax Act, 1939. Section 12-A of that Act did not make it incumbent on an assessee to pay the tax before his appeal could be entertained and that onerous condition was imposed only by the Andhra Pradesh General Sales Tax Act, 1957. Therefore the Sales Tax Appellate Tribunal acted beyond its jurisdiction in calling upon the assessee to pay the tax before its appeals could be entertained. *Hossein Kasam Dada (India) Ltd. v. The State of Madhya Pradesh and Others* [1953] (4 S.T.C. 114) applied.—K. M. S. LAKSHMANIER & SONS (P.) LTD. (IN VOLUNTARY LIQUIDATION) *v.* THE SALES TAX APPELLATE TRIBUNAL, HYDERABAD, AND TWO OTHERS [1967] 20 S.T.C. 103 (A.P.).

Change of law—Repeal and re-enactment of statutes—Appeal to Appellate Tribunal against order of appellate authority—State Government having no right of appeal under Kerala Act 11 of 1125—Right conferred for first time under 1963 Act—Decision of appellate authority after repeal of 1125 Act by 1963 Act—Right of State Government to appeal to Appellate

Tribunal.—The petitioner preferred an appeal under section 14 of the General Sales Tax Act, 1125, against an assessment under section 12(2) and the appeal was decided on 18th April, 1964. The 1125 Act was however repealed with effect from 1st April, 1963, by the Kerala General Sales Tax Act, 1963. The State Government had no right of appeal to the Appellate Tribunal under the 1125 Act, but section 39 of the 1963 Act conferred that right on the State Government. The question was whether the State Government could appeal to the Appellate Tribunal under section 39 of the 1963 Act against the order of the appellate authority dated 18th April, 1964: *Held*, that the petitioner could not claim a vested right in the decision of the appellate authority until 18th April, 1964, when it was rendered. But before that date the 1963 Act had come into force. Under section 61 of the 1963 Act the petitioner's appeal against the assessment must be deemed to have been preferred under section 34 of the 1963 Act, there being no vested right in favour of the petitioner, subject to which alone the repeal of the 1125 Act could take effect. If the appeal was deemed to have been preferred under section 34 of the 1963 Act, the State Government had the right of appeal to the Appellate Tribunal. *Moti Ram v. Suraj Bhan and Others* [1960] (A.I.R. 1960 S.C. 655) and *Indira Sohanlal v. Custodian of Evacuee Property, Delhi and Others* [1956] (A.I.R. 1956 S.C. 77) relied on. —*VELUKUTTY v. KERALA SALES TAX APPELLATE TRIBUNAL, TRIVANDRUM, AND OTHERS* [1967] 20 S.T.C. 28 (Ker.).

Appeal provisions should not be rendered nugatory.—The Sales Tax Officers ought to exercise their independent judgment in cases they decide and not consult the higher officer so as to render the provisions as regards appeal and revision nugatory and superfluous.—*FIDA ALI SHAIKH ALI DHARMAJWALA v. THE STATE OF BOMBAY* [1952] 3 S.T.C. 58.

Right to plead—Whether restricted to Pleadings and Registered Accountants.—See AGENT page 16 *supra*.

Levy of court-fees on memorandum of appeal and revision petitions—Whether ultra vires State Government.—The levy of court-fees under the Orissa Sales Tax Act, 1947, and the rules framed thereunder on the memorandum of appeal and revision petitions filed before the Sales Tax Authorities is *ultra vires* the State Government. There is a distinction between the law imposing "fees taken in all Courts" within the meaning of item 3 in List II of the Seventh Schedule of the Constitution and that imposing "fees in respect of any of the matters in this list" under item 66.

Under the Orissa Sales Tax Act, the Sales Tax Authorities have many functions which are inconsistent with strict judicial action and consistent with executive action. Neither the Sales Tax Officer nor the Assistant Collector or the Revenue Commissioner is a judicial tribunal functioning as a court. The requirement of levying court-fees on a memorandum of appeal or revision application when such an application is instituted is not a matter relating to the disposal of an appeal within the meaning of section 29(2)(s). The use of the expression "incidental to the disposal of appeals and applications" in that section is a clear pointer that appeal petitions themselves are not to be charged with any fee. Court-fees levied for grant of copies are governed by the provisions of the Court-fees Act and no tribunal other than a Court can charge such a fee. It may be open to the authorities to charge a fee for granting a copy as compensation for the services rendered, though the rules of natural justice would require that the assessee should be granted a copy of the assessment order free of charge. The levy of fees on a graded scale on appeals and applications for revision or review amounts to the imposition of a tax which is clearly unwarranted and is beyond the rule-making power of the State Government. —*CHAKOO BHAI GHELABHAI v. THE STATE OF ORISSA AND OTHERS* [1956] 7 S.T.C. 36 (Ori.). On appeal to the Supreme Court this decision was reversed. See below:—

—The assessee-firm having its headquarters in Madhya Pradesh was engaged, during the years 1948 to 1951, in collecting *bidi* leaves from certain forest areas in Orissa. The leaves so collected were made up into bundles and stored in the assessee's godowns in Orissa. They were then sold and despatched to various destinations outside the State of Orissa. The assessee was assessed to sales tax on these transactions of sale and his appeal and revision were not successful. The assessee thereupon filed a petition under Article 226 of the Constitution for rescinding the orders passed by the Sales Tax Authorities. The High Court held (1) that the assessment orders were bad because of the repeal by the Adaptation of Laws Order, 1950, of the second proviso to section 2(g) of the Orissa Sales Tax Act, 1947, defining "sale"; (2) that the levy of fees on a graded scale amounted to the imposition of a tax which was unwarranted and beyond the rule-making power of the State Government; and (3) that the notice issued under section 12(5) was not in accordance with law. On appeal to the Supreme Court: *Held*, (1) that, in view of the assessee's admission as recorded by the appellate

authority that all the sales were completed in Orissa, the sales fell within section 2(g) of the Act and were liable to tax under the Act and it was quite unnecessary to go to the second proviso to section 2(g); (2) that the assessing authorities including the Assistant Collector of Sales Tax and the Collector of Commercial Taxes were not courts in the strict sense of the term "Court", though they exercised quasi-judicial functions under the Act. But it did not necessarily follow that the fees imposed under rule 59 of the Rules read with section 29(2) (s) of the Act were illegal. Section 29(2)(s) could not be said to be bad on the ground of legislative incompetence and rule 59 did not go beyond what was permitted under section 29(2)(s) the fees imposed by rule 59 were not taxes at all but were for services rendered by a governmental agency; (3) that the failure to score out the unnecessary words in the notice issued in Form No. VI did not make the notice bad in law and although only one notice was issued for several quarters an assessment made for each quarter separately was not illegal.—*THE STATE OF ORISSA AND ANOTHER v. CHAKOBHAI GHELABHAI AND CO.* [1960] 11 S.T.C. 716 (S.C.).

Fee on memoranda of appeals—Power of Government to frame rules.—Section 52(1) of the Assam Sales Tax Act, 1947, in so far as it authorises the administrative authorities to frame rules to provide for payment of fee on memoranda of appeals is not an excessive delegation of legislative powers and therefore rule 74 of the Assam Sales Tax Rules, 1947, is not *ultra vires* the Government on this ground. The mere fact that the imposition of fee forms a distinct head of the legislative list is no bar to the Legislature delegating the power to fix fees to the administrative authorities as ancillary to the main purpose of the Act and with a view to carry out the purposes of the Act. The validity of rule 74 was challenged on the ground that it was an excessive delegation of legislative powers and that the levy under it was in fact a tax and not a fee but no facts were pointed out to show that the levy did not fulfil the requirement of a fee. Emphasis was however laid on the fact that the income from the fee was not earmarked for the purposes of meeting the expenses of appeals and was taken to the general revenue of the State: *Held*, that the levy was not a tax but was in the nature of a fee and the fact that all the collections went to the consolidated fund of the State was not by itself conclusive to show that the levy was not a fee. *MEHROTRA, J.*—The Assam Sales Tax Act, 1947, was enacted under item 48 of List II of Schedule VII of the Government of India Act, 1935, and section 52(1) only authorises

the Government to frame rules as a subsidiary legislation to carry out the purposes of the Act. Any rule enacted in the exercise of the validly delegated power under section 52 could not be said to be deriving its legislative competence from item 3 or 66 of List II and could not be said to be on the same subject as the Court-fees Amendment Act. It could not also be said that by providing in the Court-fees Act for the levy of fees, the provisions of rule 74 stood impliedly repealed. *SARJOO PROSAD, C.J.*—The amendment of the Court-fees Act providing for payment of a fixed fee on memoranda of appeals to an appellate authority prescribed under the Assam Sales Tax Act, 1947, by implication repealed the provision in rule 74 of the Assam Sales Tax Rules, 1947, to that extent. The two provisions could not stand together and the later legislation, which was an Act of the Legislature and not merely that of a delegate, should prevail. The Assistant Commissioner of Taxes was the prescribed authority within the meaning of section 30 of the Assam Sales Tax Act, 1947, and he was therefore competent to entertain an appeal.—*BAJRANGLAL NANDALAL v. COMMISSIONER OF TAXES, ASSAM* [1960] 11 S.T.C. 125 (Assam).

Assessment of items without objection—Subsequent claim in appeal for exemption.—Despatches of goods from one branch of a dealer to another branch do not make out a sale taxable under the Orissa Sales Tax Act, 1947. An assessment under section 12(1) of the Act is completed when the assessing officer merely accepts the return filed without calling for further evidence. Only then he is competent to accept the return as final. But once he has proceeded under section 12(2) to call for the accounts, a burden is thrown on the assessing officer to make the assessment on the basis of the evidence produced. The petitioner filed a return giving as his total turnover Rs. 1,40,161-13-6 and taxable turnover as Rs. 1,37,358-13-6 and deposited the tax on that basis. The assessing officer called upon him to produce his accounts under section 12(2) and after the production of the accounts the officer passed the following order:—"Examined the accounts produced. Return submitted is accepted. No demand." The petitioner appealed and raised the issue that out of his gross turnover, Rs. 1,35,028-4-0 represented value of goods transferred from his branch at A to his branch at T and this not being a sale he was entitled to a rebate for this amount. The Assistant Collector and Collector did not allow the claim on the ground that the point was not raised before the assessing officer and an admission had been made as regards the tax payable: *Held*, that there was evidence before the assessing officer to show

that the sum of Rs. 1,35,028-4-0 represented transactions of mere despatches to the petitioner's own branch outside the State. This was not taxable under the Sales Tax Act and the assessing officer should have considered this in making his assessment.—A. K. JOSHI AND COMPANY, *In re* [1955] 6 S.T.C. 70 (Ori.).

Irregular service of notice—Preferring of appeal against assessment—Whether amounts to acceptance of service.—Where notices intimating to the accused the assessments as also the time for payment of the tax were served on a clerk of the accused but there was no evidence to prove that the clerk was acting as the accused's manager or agent: *Held*, that the accused could not be convicted under section 15(b) for non-payment of the tax: *Held further*, that merely from his preferring an appeal from the assessment order, it could not be inferred that the accused had accepted such service of notice as sufficient.—PUBLIC PROSECUTOR *v.* MULLANGI SOOLAPPA [1956] 7 S.T.C. 22 (Mys.).

Additional evidence—Entertainment by appellate authorities—Practice and principles.—The Bengal Finance (Sales Tax) Act, 1941, says nothing about the admissibility of fresh evidence by appellate authorities and therefore the practice and principles of the Civil Procedure Code have to be followed. Under the Civil Procedure Code neither party in an appeal has a right to adduce additional evidence before the appellate authority though the latter may admit such evidence if it considers this necessary in order to enable it to come to a decision. Even if the appellate authority did not act with due discretion in refusing to admit fresh evidence, the aggrieved party has no right of appeal against such an action. The mere discussion of the additional evidence by the Additional Commissioner does not amount to its admission and the appellate order could not be revised on this ground alone, especially as the evidence itself was not enough to satisfy the Additional Commissioner that the goods had been despatched by or on behalf of the petitioners as required by section 5(2)(a)(v).—HASTINGS MILL LTD. *v.* STATE OF WEST BENGAL [1956] 7 S.T.C. 503.

Power to remand case.—An Appellate Assistant Commissioner entertaining an appeal under section 14 of the General Sales Tax Act, 1125, has the power to remand the case.—C. VELUKUTTY *v.* THE STATE OF KERALA [1962] 13 S.T.C. 903 (Ker.).

Appeal to delegator from decision of delegatee—Validity of provisions regarding appeal.—Under the Bengal Finance (Sales Tax) Act, 1941, the Commissioner can delegate some of his powers for the purposes of the Act to the Commercial Tax

Officers and Assistant Commissioner and that delegation does not make an appeal to the Assistant Commissioner or Commissioner either *ultra vires* or beyond the statute. For the purpose of division of work and for purposes of the administration of the Act, the Commercial Tax Officers are like the courts of first instance and therefrom appeal is given to the Assistant Commissioner and finally from the Assistant Commissioner to the Commissioner. This internal division for the administration of the Act and for the better functioning of its different purposes is not beyond the letter or spirit of the statutory provisions. It is permissible for a delegation of powers to be so framed, as under rule 74 read with section 15, that an appeal shall lie from the decision of the delegatee to the delegator. In such a case of delegation it cannot be said that the appellate authority and the authority appealed against are the same. Consequently the statutory provision and the rules for appeal and the division of work under the Act between the Commissioner, the Assistant Commissioner and the Commercial Tax Officer with the Board of Revenue working as a final court of appeal are *intra vires* the statute and rule 74 is therefore valid. In a proceeding under Article 226 of the Constitution, the Court can and should examine and scrutinize the recorded facts and see if the impugned decision is justified by any substantial evidence. It can set aside the decision not supported by any evidence, but the writ proceeding cannot itself become an institution for recording new facts for the first time. Proceedings in *certiorari* or prohibition under constitutional writs in their nature are not appellate or fact finding but only supervisory.—KAPUR BROTHERS *v.* COMMERCIAL TAX OFFICER AND ANOTHER [1958] 9 S.T.C. 121 (Cal.).

—As the right of appeal is not an inherent right, it cannot come under the category of fundamental rights. It is therefore open to the Legislature to impose limitations on the right of appeal. Consequently the proviso to section 22(1) of the C.P. and Berar Sales Tax Act, 1947, which imposes a condition of payment of the tax with penalty, if any, before an appeal is admitted is not *ultra vires* the State Legislature.—NEMKUMAR KESRIMAL *v.* COMMISSIONER OF SALES TAX, MADHYA PRADESH [1955] 6 S.T.C. 222 (Nag.).

Maintainability of appeals—Appeal and revision under section 20, Bengal Finance (Sales Tax) Act, 1941—Whether lies against a revised assessment—Amendment made to section 20(3) by Act XLVIII of 1950—Whether retrospective—Whether confers power to revise for any prior period.—An appeal

under section 20(1) and a revision under section 20(3) of the Bengal Finance (Sales Tax) Act, 1941, lies against an order revising an assessment. The amendment made to section 20(3) by the Bengal Finance (Sales Tax) (West Bengal Amendment) Act, 1950, conferred power to revise any assessment made for any period which includes a period prior to the date of the Amendment Act. The intention of the Legislature has been made clear by the fact that this sub-section is subject to the rules prescribed under the Act, *viz.*, rule 80(5), under which the period during which such a revision can be made effective has been prescribed. There is therefore no question of the Amendment Act being retrospective.—**NAGENDRA NATH SHAH v. THE STATE OF WEST BENGAL AND OTHERS** [1957] 8 S.T.C. 641 (Cal.).

Limitation—Appeal from assessment—Notice of assessment and assessment order served on different dates—When period begins to run.—When an appeal is preferred from any of the orders mentioned in section 9 the period has to be computed from the date of service of a copy of the order, and when it is from an assessment, it has to be computed from the date of service of a notice of assessment. A notice in Form XI of the U.P. Sales Tax Rules, 1948, is the notice of assessment contemplated by section 9 and the period of limitation has to be computed from the date of its service. Even if the notice of assessment was not accompanied by a copy of the assessment order, the period of limitation has still to be computed from the date of service of the notice. Merely because by rule 45 the State Government requires the Sales Tax Officer to serve upon the assessee not only a notice of assessment but also a copy of the assessment order, it cannot be said that so long as the copy of the assessment order is not served upon the assessee the period of limitation for an appeal does not commence at all. The date on which a copy of the assessment order is served has absolutely no bearing on the date on which the period of limitation is to commence. It is to commence in every case on the date of service of a notice of assessment. The assessee could not circumvent the departmental remedy of appeal by invoking the High Court's extraordinary jurisdiction under Article 226 of the Constitution.—**SRI JAGANNATH BHATLA v. SALES TAX OFFICER AND OTHERS** [1966] 17 S.T.C. 540 (All.).

Limitation—Service of notice in Form 6—Whether service of notice of assessment contemplated by section 20(1), Mysore Sales Tax Act, 1957—Starting point of limitation.—The service of notice in Form 6 framed under the Mysore Sales Tax Act, 1957, must be considered as service of a

"notice of assessment" as contemplated by sec. 20(1) of the Mysore Sales Tax Act, 1957. There is no provision in the Mysore Sales Tax Act, 1957, or the rules framed thereunder requiring the assessing authority to serve a copy of his order of assessment on the assessee. The starting point of limitation for filing an appeal under section 20 is not the service of a copy of the order of assessment, but the service of a "notice of assessment". *Civil Revision Petition No. 401 of 1960 decided on 10th January, 1962* (Mysore High Court) referred to.—**N. V. GIRIYAPPA SETTY & SONS v. STATE OF MYSORE** [1967] 19 S.T.C. 197 (Mys.).

Delay in filing appeal—Whether can be condoned.—The provision contained in section 20(1) of the Bihar Sales Tax Act, 1944, that an appeal has to be filed within 60 days of the date of the order of assessment is not satisfactory. As assessment orders are liable to be passed by the tax officers behind the back of the parties, assessees or their representatives should be given every opportunity of finding out without any delay whether an order has been passed and if so, what that order is. Where the delay in filing the appeal was not much and there was evidence to show that the assessee was ill at the critical or relevant time: *Held*, that there were good reasons for admitting the appeal beyond the period of limitation.—**RAMBHAGAT SAO JANKI SAO v. THE PROVINCE OF BIHAR** [1946] 1 S.T.C. 145.

—The question whether an assessee was ill or not and whether he was prevented on account of that illness from presenting the appeal in time is a pure question of fact and the decision of the tribunal on that question is final and cannot be interfered with in a reference made to the High Court under the provisions of section 25 of the Bihar Sales Tax Act, 1947. In order that an assessee could claim to get the delay in filing an appeal condoned, he must show by his conduct that he was diligent all along in taking appropriate steps and the delay was caused notwithstanding his due diligence. If, however, it appears that an assessee is not diligent but is guilty of laches and negligence and does not take appropriate steps for pursuing his remedy till about the close of the period prescribed for appeal, he cannot claim to have the delay condoned if perchance or by accident he happened to have exceeded the prescribed period in taking the proper steps. In such a case he must be prepared always to take the risk of having his remedy barred without expecting exercise of any discretion by a Court in his favour in condoning the delay.—**BALDEO LAL ROY v. STATE OF BIHAR** [1960] 11 S.T.C. 104 (Pat.).

—Where the Appellate Tribunal, Madras, in exercise of their discretion excused the delay in filing the appeal the High Court, could not, in revision interfere with that discretion.—*THE STATE OF MADRAS v. RALLI BROTHERS LTD.*, MADRAS [1954] 5 S.T.C. 395 (Mad.).

Condonation of delay in filing appeal—Sufficient cause.—The assessee before filing an appeal against assessment order made a *bona fide* request to the officer to adjust a portion of the tax demanded against the tax claimed to have been paid by his principal, but long after the time fixed for filing the appeal, the officer informed the assessee that the adjustment could not be made. The assessee then found that the assessment order originally served on him had not been signed by the assessing authority and he had to get it rectified which resulted in a further delay in filing the appeal: *Held*, that these circumstances would constitute sufficient cause to condone the delay in filing the appeal.—*BAV'S MEDICALS v. THE STATE OF MADRAS* [1967] 20 S.T.C. 259 (Mad.).

Condonation of delay—Sufficient cause—Delay in unsuccessfully pursuing remedy under Article 226—Whether can be condoned.—In deciding the question whether sufficient cause is shown by the assessee to excuse the delay in filing the appeal, the most relevant factor to be taken into account is whether the party concerned has *bona fide* prosecuted some other proceeding because of which delay has occurred in filing the appeal. It may be that, in selecting a particular remedy, the party may have been ill-advised. The test is not whether in law the other remedy prosecuted is legally correct and justifiable. There may however be cases where, *ex facie*, the remedy chosen by the assessee is unjustified and may show lack of *bona fides*. Where there were no circumstances or facts to assume that, when the assessee invoked Article 226 of the Constitution and sought the assistance of the High Court to quash the assessment orders, they acted otherwise than *bona fide*, but they honestly believed that they could get the relief they wanted in the writ petitions and the delay of about three years in filing the appeals was more due to the time taken by the pendency of the writ petitions in the High Court: *Held*, that the delay in filing the appeals should be condoned.—*J. M. BHANSALI AND OTHERS v. THE STATE OF MADRAS* [1968] 21 S.T.C. 411 (Mad.).

—See also cases under PAYMENT OF TAX page 39-40 *supra*.

Dismissal of appeal for default without deciding case on merits—Legality.—Where an assessee filed an appeal before the Commissioner under

section 20 of the Bihar Sales Tax Act, 1944, and the Commissioner fixed a date for hearing of the appeal under rule 58 of the Bihar Sales Tax Rules, the order of the Commissioner dismissing the appeal for default without deciding the question raised by the assessee in his memorandum of appeal is *ultra vires* and not in accordance with law. *M. X. De Nornha & Sons, Kanpur v. Commissioner of Income-tax, U.P.* [1950] (18 I.T.R. 928) applied.—*MD. AMIN BROTHERS v. THE STATE OF BIHAR* [1951] 2 S.T.C. 63 (Pat.).

—*Rule 68(5), U.P. Sales Tax Rules, 1948, providing dismissal of appeal for default—Whether ultra vires rule-making authority.*—The intention of the Legislature in enacting section 9 of the U.P. Sales Tax Act, 1948, is to make the appellate court under the Sales Tax Act a watch-dog in the general public interest and particularly on behalf of the public revenues in so far as taxes are gathered through the instrumentality of the Sales Tax Act. The intention that the appeal once filed by the assessee should be disposed of only on its merits is clear from the language used in section 9 which rules out the possibility of the dismissal of an appeal for default. That being so, rule 68 of the U.P. Sales Tax Rules, 1948, which empowered the appellate court to dismiss an appeal for default is *ultra vires* the Act. *Commissioner of Income-tax, Punjab v. Nawab Shah Nawaz Khan* [1938] (6 I.T.R. 370) and *R. v. Income-tax Special Commissioners; ex parte Elmhirst* [1936] (52 T.L.R. 143) relied on. *State of U.P. v. Lakshmi Ice Factory* [1963] (A.I.R. 1963 S.C. 399), *Shri Bhagwan Radha Kishen v. Commissioner of Income-tax* [1952] (22 I.T.R. 104), *Ravula Subba Rao v. Commissioner of Income-tax* [1955] (27 I.T.R. 164), *M. M. Ispahani Ltd. v. Commissioner of Excess Profits Tax, West Bengal* [1955] (27 I.T.R. 188) and *Tamarind Products v. Commissioner of Income-tax* [1956] (30 I.T.R. 348) distinguished.—*HINDUSTAN METAL WORKS, HATHRAS v. SALES TAX OFFICER, HATHRAS* [1964] 15 S.T.C. 116 (All.).

Dismissal of appeal for default—Regulation 8(2), Appellate Tribunal Regulations, 1957—Whether ultra vires section 22 (4), Mysore Sales Tax Act, 1957.—Regulation 8 (2) of the Appellate Tribunal Regulations, 1957, to the extent it purports to empower the Appellate Tribunal to dismiss an appeal before it for default of appearance of the appellant or his Advocate is *ultra vires* of section 22 (4) of the Mysore Sales Tax Act, 1957. *New India Life Assurance Co. Ltd. v. Commissioner of Income-tax, Excess Profits Tax, Bombay City* [1957] (31 I.T.R. 844); *S. Chenniappa Mudaliar, Madurai v. Commissioner of Income-tax, Madras* [1964] (53 I.T.R. 323. (1964) 2 M.L.J. 157) and *Md. Amin*

Brothers v. The State of Bihar [1951] (2 S.T.C. 63; A.I.R. 1951 Pat. 152) relied on.—*N. ABDUL SUBHAN SAHEB & SONS v. MYSORE SALES TAX APPELLATE TRIBUNAL, BANGALORE, AND ANOTHER* [1965] 16 S.T.C. 17 (Mys.).

Bihar Sales Tax Act, Section 20—“*Determination*”, meaning of.—The provisions of section 20 of the Bihar Sales Tax Act are *in pari materia* with section 31 of the Indian Income-tax Act. The word “determination” in section 20(2) of the Bihar Sales Tax Act must be construed to mean a decision on the point raised in the case and not merely an order of dismissal for default.—*MD. AMIN BROTHERS v. THE STATE OF BIHAR* [1951] 2 S.T.C. 63 (Pat.).

Summary dismissal of time-barred appeal—*Whether disposal of appeal*.—See *RADHA KISHAN DINDAYAL v. COMMISSIONER OF TAXES, ASSAM* [1951] 2 S.T.C. 4 (Assam).

Appeal preferred against assessment—*Whether assessee can be prosecuted for failure to pay within time tax assessed*.—The provision in section 15(b) of the Madras General Sales Tax Act, 1939, is intended to expedite the collection of tax by means of prosecution. Under section 15(b) when any person fails to pay within the time allowed any tax assessed on him by the assessing authority, *viz.*, Deputy Commercial Tax Officer or Assistant Commercial Tax Officer, then the offence has been committed and he can be prosecuted. There is no need for the Deputy Commercial Tax Officer or the Assistant Commercial Tax Officer to wait for the assessee to exhaust all his remedies by way of appeal to the Commercial Tax Officer and the Sales Tax Tribunal. If an appeal is preferred by an assessee within the time allowed to him and if at that time the Tribunal passes an order exonerating him from paying the tax, then it is most unlikely that the officers themselves would prosecute the assessee any further.—*THE PUBLIC PROSECUTOR v. K. SESHASHEET* [1953] 4 S.T.C. 294 (Mad.).

—The mere fact that the assessee has filed appeal against the assessment is not a good defence in a prosecution for non-payment of the tax due from him within the time allowed. At best he will not be liable to punishment in case, after all proceedings for challenging the assessment are over, the amount of assessment against him has been reduced to a figure equal to or less than the amount actually paid by him. As long as the amount which remains finally due from him exceeds the amount which he has actually paid, he is guilty of wilful non-payment of tax due from him.—*STATE v. AWATAR KRISHNA* [1957] 8 S.T.C. 244 (All.).

—*Failure of assessee to pay tax or to obtain order from appellate authority*—*Assessee whether liable to be convicted*.—The respondent, on whom assessments to sales tax were made under the Mysore Sales Tax Act, 1957, preferred appeals against them under section 20(1). He did not, however, pay the sales tax assessed or any portion thereof nor did he seek or obtain from the appellate authority any order under the proviso to section 20(5). As the respondent did not comply with the notices of demand served on him, complaints were preferred against him before the Magistrate. The Magistrate held that since the respondent had preferred appeals against the orders of assessment and these appeals were pending when the complaints were made, the respondent was not liable for offences under section 29(1)(d) and acquitted him: *Held*, that the acquittal was unwarranted and the respondent was liable to be convicted under section 29(1)(d). The liability to pay tax is created by the order of assessment. Where tax so assessed is not paid despite service of notice of demand the substantive portion of sub-section (3) of section 13 renders the assessee liable to be proceeded against under clause (a) or clause (b) of that provision. The assessee who has moved the appropriate authority under one of the provisions referred to in the proviso has, however, been afforded interim protection from action under clause (a) or clause (b) provided that he approaches the appropriate authority and obtains from that authority an order of stay of proceedings under clause (a) or clause (b). That, however, is not enough. If the order of the appropriate authority lays down any condition the proviso requires that the assessee must comply with those conditions before he can obtain interim relief under the proviso. Where the assessee has not paid the tax within the time allowed by a notice of demand he immediately renders himself liable to be proceeded against under section 29(1)(d). Decision of the Mysore High Court reversed.—*THE STATE OF MYSORE v. SHANTA VEERAPPA CHANNA MALLAPPA BOMMANAHALLI AND OTHERS* [1966] 18 S.T.C. 9 (S.C.).

Summary dismissal of time-barred appeal—*Whether disposal of appeal*.—The assessee was assessed to a certain sum as sales tax by the Superintendent of Taxes on the ground that the sale proceeds of tobacco leaf (hucca leaf) were taxable. The assessee preferred an appeal to the Assistant Commissioner who dismissed it summarily without fixing any date for its hearing and without giving the assessee any opportunity of being heard. He however stated that tobacco leaf was taxable and that the appeal was time-barred. The assessee then submitted a petition to the Commissioner of Taxes under section 32(2)

for a reference of certain questions of law alleged to have arisen from the order of the Assistant Commissioner. The Commissioner refused to treat the order of the Assistant Commissioner as having been passed under section 30(4) notwithstanding the fact that the Assistant Commissioner had held that the tobacco leaf was taxable. He further stated that as the appeal was time-barred, it could not have been heard on the merits under section 30(4) and the observations on the merits made in a time-barred appeal could not afford any basis for a reference. The assessee then applied to the High Court under clause (5) of section 32 praying that the Commissioner may be directed to refer to the High Court the following questions of law: "(1) Whether tobacco for hucca (leaf) is not taxable under the Assam Sales Tax Act? (2) Whether the procedure followed by the learned Assistant Commissioner of Taxes is not legal and proper and whether he was bound to fix a date for hearing? and (3) Whether the petitioners are protected under the proviso to section 51 of the Assam Sales Tax Act?" *Held*, that the appeal to the Assistant Commissioner was summarily dismissed as time-barred and the further finding embodied in the order that tobacco leaf was taxable was unnecessary and could not be made the basis for a demand for reference in the circumstances of the case.—*RADHA KISHAN DINDAYAL v. COMMISSIONER OF TAXES, ASSAM* [1951] 2 S.T.C. 4 (Assam).

Appeal against assessment orders where there are departmental instructions.—Where there are departmental instructions and the appellate authority is bound by those instructions, it would be futile for an assessee to file an appeal against the assessment order and in such a case a petition under Article 226 would be maintainable.—*BHARAT MOTOR COMPANY v. ASSESSING AUTHORITY AND OTHERS* [1968] 22 S.T.C. 133 (Punj.).

Appeal—Maintainability of revision from assessment order when appeal from same order is dismissed—*U. P. Sales Tax Act (15 of 1948), Sec. 10(3)*.—*MODI SUGAR MILLS LTD. v. COMMISSIONER OF SALES TAX, UTTAR PRADESH* [1965] 16 S.T.C. 462 (All.).

Jurisdiction of appellate authority to consider validity of provisions of Act.—Section 21 of the C.P. and Berar Sales Tax Act is analogous to section 67 of the Income-tax Act in barring the jurisdiction of civil courts. Section 22 of the C.P. and Berar Sales Tax Act provides for appeal and revision to the Sales Tax Commissioner and the Board of Revenue; and section 23 contains provisions analogous to those contained in section 66 of the Income-tax Act on the subject of

statement of case to the High Court. Thus, on the authority of the ruling cited, *Raleigh Investment Co. Ltd. v. Governor-General in Council* [1947] (15 I.T.R. 332), it could be said that the C.P. and Berar Sales Tax Act also contains machinery which enables an assessee effectively to raise the question whether or not a particular provision of the Act bearing on the assessment made upon him is *ultra vires* and the civil court's jurisdiction being barred in this matter, that machinery itself should be employed in getting a decision on such a question. The contention is, therefore, correct that the Board of Revenue can entertain the question whether Explanation II to section 2(g) is *ultra vires* the Provincial Legislature.—*GOVINDRAM LAXMAN PRASAD v. STATE OF MADHYA PRADESH* [1951] 2 S.T.C. 176.

—It is a fundamental principle of the administration of justice in all Courts and for all officers upon whom is cast the duty of deciding a case judicially that they will entertain objections to the jurisdiction of their own authority. If a provision of Sales Tax Act is *ultra vires* the Legislature which enacted it, it is the duty of the Sales Tax Officer or the appellate or revisional authority, though appointed under the Sales Tax Act, to decide whether the Act or any portion thereof is *ultra vires* or not.—*BUDH PRAKASH JAI PRAKASH v. SALES TAX OFFICER, KANPUR, AND OTHERS* [1952] 3 S.T.C. 185 (All.).

—Where the petitioners were duly served with notice and had ample opportunity of putting forward before Tribunals constituted under the Act all the contentions based on the provisions of the Act or the rules, they could not be permitted to put forward in proceedings by way of writs under the Constitution contentions which were available to them before the Tribunals. The only pleas that were open to them in such proceedings were those which could not have been urged before the Tribunals, such for example, the question whether the Act was *ultra vires*, which could not be entertained by the Tribunal which owed its very existence to the Act.—*V. M. SYED MOHAMED AND CO. AND ANOTHER v. THE STATE OF MADRAS AND ANOTHER* [1952] 3 S.T.C. 367 (Mad.).

—In proceedings by way of writ under Article 226 of the Constitution of India the High Court would not entertain such objections to the assessment of sales tax as could have been urged before the Tribunals constituted under the Act and only objections relating to the validity of the Act would be open to the petitioner.—*GOVINDARAJULU NAIDU AND CO. v. THE STATE OF MADRAS AND ANOTHER* [1952] 3 S.T.C. 405 (Mad.).

—Even if the Sales Tax Authorities rely upon an *ultra vires* provision of the Sales Tax Act in

making the assessment the action of the authorities is not without jurisdiction and the party aggrieved is entitled to have his grievances redressed by the appropriate procedure which the machinery of the Act itself provides.—*DIAMOND COAL CO., LTD. v. THE STATE OF BIHAR AND ANOTHER* [1953] 4 S.T.C. 99 (Pat.).

—The decision of the Privy Council in *Raleigh Investment Co. Ltd. v. Governor-General in Council* [1947] (15 I.T.R. 332; 75 I.A. 50) would have applied to the petitioners if they had come before the High Court challenging an assessment made under the Sales Tax Act; but no assessment had yet been made on them. Moreover, the jurisdiction of the Sales Tax Authorities was limited to decide questions regarding the validity of the assessment, but no jurisdiction had been conferred upon them to adjudicate upon the validity of the Act on the ground that it affected the fundamental rights of the petitioners.—*UNITED MOTORS (INDIA) LTD. AND OTHERS v. THE STATE OF BOMBAY AND ANOTHER* [1953] 4 S.T.C. 10 (Bom.).

—The Tribunals constituted under the Sales Tax Act, whether original, appellate or revisional, could not entertain the contention that the Act is *ultra vires* inasmuch as their duty is merely to administer the Act.—*Per VENKATARAMA AYYAR, J., in THE BENGAL IMMUNITY COMPANY LIMITED v. THE STATE OF BIHAR AND OTHERS* [1955] 6 S.T.C. 446 (S.C.).

—Held, *per* SUBBA RAO, WANCHOO and SIKRI, JJ. (SHAH and RAMASWAMI, JJ., *dissenting*): (i) Section 13 of the Bombay Sales Tax Act, 1946, does not contemplate objections being entertained regarding the constitutional validity of any payment made by the dealer. Any appeal against an order made under section 13 would be only on the ground that the computation made by the Sales Tax Officer is erroneous and not on the ground that the tax paid by the dealer was not constitutionally payable at all under the Act. No machinery is provided in section 13 for dealing with the objection that the money was paid by virtue of a void provision of the Act; (ii) The Commissioner appointed under the Bombay Sales Tax Act would not be competent to go into the question whether section 6 of the Act under which the transactions were apparently taxable was *ultra vires* or not.—*THE STATE OF BOMBAY (NOW GUJARAT) v. JAGMOHANDAS AND ANOTHER* [1966] 17 S.T.C. 529 (S.C.).

—*Per* SUBBA RAO, WANCHOO and SIKRI, JJ. (SHAH and RAMASWAMI, JJ., *dissenting*).—If a statute imposes a liability and creates an effective machinery for deciding questions of law or fact arising in regard to that liability, it may, by necessary implication, bar the

maintainability of a civil suit in respect of the said liability. A statute may also confer exclusive jurisdiction on the authorities constituting the said machinery to decide finally a jurisdictional fact thereby excluding by necessary implication the jurisdiction of a civil court in that regard. But an authority created by a statute cannot question the *vires* of that statute or any of the provisions thereof whereunder it functions. It must act under the Act and not outside it. If it acts on the basis of a provision of the statute, which is *ultra vires*, to that extent it would be acting outside the Act. In that event, a suit to question the validity of such an order made outside the Act would lie in a civil court. The expression “under this Act” in section 18-A of the Madras General Sales Tax Act, 1939, refers both to procedural and substantive provisions of the Act. Therefore any assessment made under an *ultra vires* provision of the Act cannot be said to be made under the Act and section 18-A would not be a bar to the maintainability of a suit for refund of the amounts paid in respect of such an assessment. The procedural machinery under the Act can be utilised only to decide disputes that arise under the substantive provisions of the Act, which are not *ultra vires*.—*K. S. VENKATARAMAN AND CO. (P.) LTD. v. THE STATE OF MADRAS* [1966] 17 S.T.C. 418 (S.C.).

—See also cases digested under headings WRITS UNDER CONSTITUTION and SUITS.

Power of appellate authorities to award costs.—There is nothing in the Bihar Sales Tax Act, 1944, authorising any of the Sales Tax Authorities to award costs. The only provision in that Act with regard to costs is that contained in section 21(6) which provides that where a reference is made to the High Court under this section the costs including the disposal of the fee referred to in sub-section (1) shall be in the discretion of the Court. The fact that the Act contains a single provision with regard to costs, and that relating only to the High Court, reinforces the view that apart from that provision there is no power to award costs. There is no inherent power to award costs.—*THE PROVINCE OF BIHAR v. JOKHI RAM RAM PRASAD AND ANOTHER* [1948] 1 S.T.C. 202 (Pat.).

—In a proceeding under the Bihar Sales Tax Act, 1947, costs cannot be awarded against a dealer except by the High Court under clause (6) of section 25.—*BHAGWAN DAS v. THE PROVINCE OF BIHAR* [1949] 1 S.T.C. 234 (Pat.).

Appealable orders—Necessity to give reasons.—The assessing officers and appellate authorities acting under the Madhya Pradesh General Sales Tax Act, 1958, exercise quasi-judicial functions

and their procedure must conform to the rules of natural justice. Therefore when an appellant claims the benefit of the proviso to section 38(3) and prays for being permitted to file his appeal on paying a lesser amount of the tax, the appellate authority has to give to the appellant an opportunity of being heard. The appellate authority, however, is not required to embark upon an elaborate enquiry into the grounds put forward to sustain the prayer. All that it ought to do is to give the appellant a fair hearing in order to enable him to place his case in support of the prayer. Since an order of summary dismissal grounded on a rejection of such a prayer is appealable, the appellate authority must also give reasons for the course adopted by it.—*COMMISSIONER OF SALES TAX, MADHYA PRADESH v. MANGILAL RAMESHWAR DAYAL* [1964] 15 S.T.C. 326 (M.P.).

Effect of levy of penalty for failure to pay tax assessed within time—*When assessment set aside on appeal—Whether levy of penalty void—Law prior to amendment of Act by Ordinance 1 of 1964.*—Prior to the amendment of section 13 of the Orissa Sales Tax Act, 1947, by Ordinance 1 of 1964 the levy of penalty for failure to pay the amount originally assessed within the time prescribed by law, which was valid at the time the order of penalty was passed, could not subsequently become void merely because the order of assessment was set aside on appeal by the Tribunal and the proceedings were remanded for reassessment. [As the law stood then there was no provision in the Act to the effect that if the original order of assessment was subsequently annulled on appeal, revision or reference by the superior authorities the penalty imposed should be cancelled and the sum paid as penalty should be refunded.]. *M. O. Paily v. Additional Income-tax Officer, I Circle, Trichur, and Another* [1959] (35 I.T.R. 488) relied on.—*DWARIKA PRASAD SHARMA v. STATE OF ORISSA AND OTHERS* [1965] 16 S.T.C. 144 (Ori.).

Appeal to Appellate Tribunal

Powers of Tribunal—*Power to pass order which has effect of enhancing assessment.*—Under section 12-A of the Madras General Sales Tax Act, 1939, the Appellate Tribunal have no authority to add a new item to the turnover and include therein what was not before the assessing authority for that would be a matter not assessed but omitted from the assessment. As the Appellate Tribunal are not the assessing authorities and have merely to determine facts giving rise to the tax liability and the law in relation thereto, they are empowered to allow an appeal and remand it for the assessment being computed in accordance

with the facts as found and the law as laid down by them and this reassessment has to be done by the assessing authorities. Where the basis of an assessment is challenged by an assessee and this is accepted by the Tribunal and the matter is remitted to the assessing authorities, there has to be a reassessment in conformity with their order. In particular cases such a reassessment might result in a diminution of tax liability. In other cases, it might result in an enhancement of the tax. The validity of their order cannot be judged by the result. An order of the Tribunal cannot therefore be held invalid merely because it results in an enhancement of the assessment. The assessee, who were registered manufacturers of groundnut oil, sold some manufactured oil outside the State and claimed the deduction under rule 18(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, and also the exemption under Article 286(1)(a) of the Constitution. The assessing authorities allowed their claim under rule 18(2) but refused to grant them the exemption under Article 286(1)(a). The assessee appealed to the Appellate Tribunal and contended that while the lower authorities rightly granted them the deduction under rule 18(2), they had erred in holding that the grant of such deduction was inconsistent with the claim to exemption under Article 286(1)(a). The Tribunal held that the assessing authorities had erred in not excluding the assessee's "outside sales" but the purchase price of the groundnut could not be deducted under rule 18(2). This decision of the Tribunal had the effect of enhancing the assessment. The assessee contended that if the Tribunal found that they were entitled to exemption under Article 286(1)(a) the jurisdiction of the Tribunal was confined to allowing the appeal, and not to disturb the relief by way of deduction under rule 18(2) granted by the lower authorities. The Tribunal rejected this contention and directed the assessing authority to make a recomputation. On a revision filed by the assessee : *Held*, that the decision of the Tribunal was correct and the order passed by them was proper. Under the provisions of the Madras General Sales Tax Act, 1939, from any order of assessment passed by the Deputy Commercial Tax Officer, appeals to the Commercial Tax Officer as well as to the Appellate Tribunal therefrom are open only to the assessee and not to the department. Therefore the powers of the appellate authority to modify the basis of an assessment cannot be circumscribed by the consideration of the department having accepted the order of the lower authority in so far as it decided any point against it.—*KALAM SOMASUNDARAM CHETTIAR AND SONS v. THE STATE OF MADRAS* [1955] 6 S.T.C. 304 (Mad.).

Appeal by assessee—Power to increase quantum of turnover.—Under section 12-A of the Madras General Sales Tax Act, 1939, the Appellate Tribunal has no power, in an appeal by the assessee, to increase the quantum of turnover arrived at by the department, as the Tribunal is not the assessing authority.—*T. S. RAMACHANDRA RAO v. THE STATE OF MADRAS* [1954] 5 S.T.C. 325 (Mad.).

Change of law—Power to enhance turnover.—The assessee was assessed to sales tax for the year 1955-56 under the Madras General Sales Tax Act, 1939, on 15th December, 1956, and the assessee appealed to the Commercial Tax Officer. During the pendency of this appeal, the Madras General Sales Tax Act, 1959, came into force and the appeal was transferred to the Appellate Assistant Commissioner, who reduced the assessee's turnover. The assessee preferred a further appeal to the Appellate Tribunal disputing the inclusion of another item in the turnover, which was treated by the Appellate Assistant Commissioner, as assessable to tax. The Appellate Tribunal confirmed the view of the Appellate Assistant Commissioner. In the course of hearing of the appeal, the State Representative filed a petition to enhance the turnover of the assessee by including an item which was excluded by the Appellate Assistant Commissioner. The Tribunal rejected this petition holding that the assessee had a vested right to have his appeal disposed of under the provisions of the Madras General Sales Tax Act, 1939: *Held*, that the analogy of a suitor in a civil court acquiring a vested right on the date of the institution of the action to avail himself of the benefit of a right of appeal obtaining on such date is hardly apposite to considerations that arise in respect of proceedings under a taxing enactment. The assessee did not acquire any vested right on the date of the assessment order of the Deputy Commercial Tax Officer to prevent future legislation except to the extent of the immediate appellate authority to which he could resort to for getting relief against the assessment without putting him in a position worse than that which he came to occupy by reason of the order of assessment. This vested right which the assessee had, was in no way affected, and the order of the Appellate Assistant Commissioner, which was passed after the commencement of the new Act, did not clothe the assessee with any further vested right enabling him to resist enhancement by the Tribunal. The Tribunal entertained the appeal at the instance of the assessee under the new Act only and the Tribunal was functioning under the new Act. Therefore the assessee could not maintain the position that any order of the Appellate Tribunal enhancing the assessment

made by the Appellate Assistant Commissioner would amount to deprivation of his vested right or violation of the provisions of section 61(1) of the 1959 Act and the Tribunal went wrong in holding that the petition filed by the State Representative for enhancement of the assessment was not maintainable.—*DEPUTY COMMISSIONER OF COMMERCIAL TAXES, MADRAS DIVISION v. SRI SWAMI AND CO.* [1962] 13 S.T.C. 468 (Mad.).

Exercise of discretion by Appellate Tribunal—Whether High Court can interfere.—Where the Appellate Tribunal in exercise of their discretion excused the delay in filing an appeal, the High Court could not, in revision, interfere with that discretion.—*THE STATE OF MADRAS v. MESSRS RALLI BROTHERS LTD., MADRAS* [1954] 5 S.T.C. 395 (Mad.).

Decision of Sales Tax Appellate Tribunal binding on Sales Tax Authorities.—It is not open to the Sales Tax Authorities to ignore a decision of the Sales Tax Appellate Tribunal even if it be only by a majority.—*THE STATE OF ANDHRA PRADESH v. HYDERABAD ASBESTOS CEMENT PRODUCTS LIMITED* [1968] 21 S.T.C. 267 (A.P.).

Scope of powers—Advisory instructions issued by Tribunal—Department's duty to follow.—The assessee was assessed on a turnover of about Rs. 3 lakhs by the Deputy Commercial Tax Officer and a copy of the order was served on him on 20th June, 1949. The assessee filed an appeal on 12th August, 1949, but the Commercial Tax Officer rejected the appeal as barred by time. The assessee then preferred a revision petition to the Board but after the Amending Act, 1951, came into force the Board transferred the petition to the Appellate Tribunal for disposal as if it had been an appeal preferred to the Tribunal itself. The Tribunal held that the Commercial Tax Officer rightly rejected the appeal as barred by time but directed the Commercial Tax Officer, in view of the large turnover and legal implications involved, to take up the matter *suo motu* in revision and dispose of it on merits. Against this order the Government preferred a revision petition to the High Court: *Held*, that the Tribunal did not act in excess of its jurisdiction in giving such a direction which really amounted to an advice in the circumstances of the case. When a Tribunal comes across something which it itself has no jurisdiction to investigate and remedy anything obviously unjust, it is nothing unusual for such a Tribunal to draw the attention of the authority which has got the powers of revisional jurisdiction or other jurisdiction to take up the question. Instructions of this kind issued either by the Appellate Tribunal or the High Court, when anything needing correction comes to its

notice should be respected by the departmental authorities.—DEPUTY COMMISSIONER OF COMMERCIAL TAXES, MADRAS DIVISION *v.* C. M. SWAMY & Co. [1954] 5 S.T.C. 163 (Mad.).

Maintainability of appeals to Tribunal.—The assessee preferred a revision application to the Deputy Commissioner of Commercial Taxes against the order of the Commercial Tax Officer confirming a revised assessment made by the Deputy Commercial Tax Officer. During the pendency of the application, the Deputy Commissioner issued a notice to the assessee which stated that the order of the Deputy Commercial Tax Officer had been cancelled but the assessee was asked to show cause why he should not be assessed on a turnover as estimated by him. Eventually the Deputy Commissioner passed orders accepting the figure of the Deputy Commercial Tax Officer in his revised order but really making it as an assessment made in revision by himself. Against this order the assessee preferred an appeal to the Tribunal under section 12-A but the Tribunal rejected the appeal as incompetent: *Held*, that the Deputy Commissioner had acted *suo motu* in making the final assessment and therefore the appeal to the Appellate Tribunal was maintainable. The powers of the Deputy Commissioner in sub-clause (1) and sub-clause (2) of section 12(2) are not mutually exclusive.—R. RAMIAH MOOPANAR *v.* THE GOVERNMENT OF MADRAS [1954] 5 S.T.C. 213 (Mad.).

—In assessing the assessee to sales tax for the year 1948-49 the Deputy Commercial Tax Officer declined to allow the deductions claimed by it. On appeal this order was confirmed by the Commercial Tax Officer. There was a revision to the Board and on the formation of the Appellate Tribunal this revision petition stood transferred to the Appellate Tribunal. The Tribunal treating it as an appeal disposed of it. It was contended for the State that an appeal to the Appellate Tribunal under section 12-A was incompetent because refusal to grant deductions and rebates would not amount to an “order relating to assessment” within the meaning of section 12-A: *Held*, that whether or not refusal to grant deductions or rebates would amount to “an order relating to assessment” within the meaning of section 12-A, the appeal to the Commercial Tax Officer and the further petition which culminated in an appeal to the Appellate Tribunal were really against orders of assessment as such, because the assessment was finalised by the Deputy Commercial Tax Officer, in the course of which he negatived certain claims put forward by the assessee. Further the objection to the maintainability of the appeal was not taken either before the Commercial Tax Officer or

before the Appellate Tribunal and therefore it could not be sustained in the High Court.—DEPUTY COMMISSIONER OF COMMERCIAL TAXES, MADRAS DIVISION *v.* W. H. BRADY & Co., LTD., MADRAS [1954] 5 S.T.C. 342 (Mad.).

Summary rejection of first appeal—Second appeal to Tribunal—Maintainability.—The summary rejection of a first appeal under rule 49 of the Orissa Sales Tax Rules, 1947, would amount to a disposal of the appeal within the meaning of section 23(2) of the Orissa Sales Tax Act, 1947, and therefore a second appeal would lie to the Tribunal. *Mela Ram and Sons v. Commissioner of Income-tax, Punjab* [1956] (29 I.T.R. 607; A.I.R. 1956 S.C. 367) followed. *Commissioner of Income-tax, Madras v. MTT. AR. S. AR. Arunachalam Chettiar* [1953] (23 I.T.R. 180; A.I.R. 1953 S. C. 118) referred to. *Bansidhar Mohanti v. Commissioner of Income-tax* [1955] (28 I.T.R. 625; A.I.R. 1955 Orissa 1) no longer good law.—COMMISSIONER OF SALES TAX, ORISSA *v.* RAMAKARAN AGARWALLA [1962] 13 S.T.C. 407 (Ori.).

—Even a summary dismissal of a first appeal would amount to a disposal of the appeal within the meaning of section 23(2) of the Orissa Sales Tax Act, 1947, and a second appeal before the Tribunal would lie. Once a second appeal lies before the Tribunal, that authority has full powers to enter into facts and law as authorised by section 23(3)(c) of the Act. *Mela Ram and Sons v. Commissioner of Income-tax, Punjab* [1956] (29 I.T.R. 607; A.I.R. 1956 S.C. 367) and *Commissioner of Sales Tax, Orissa v. Ramakaran Agarwalla* [1962] (13 S.T.C. 407) followed.—COMMISSIONER OF SALES TAX, ORISSA *v.* AUROBINDO AUTO SERVICE [1963] 14 S.T.C. 46 (Ori.).

—See also KAVUKOTI EKANADHAM AND ANOTHER, *In re* [1967] 20 S.T.C. 242 (A.P.) and AKULURU VENKATA SUBRAMANYAM *v.* SPECIAL COMMERCIAL TAX OFFICER (EVASIONS), VIJAYAWADA, AND OTHERS [1967] 20 S.T.C. 249 (A.P.).

Assessment set aside and case remanded by first appellate authority—Appeal to Appellate Tribunal against remand order—Proper court-fee payable.—The Sales Tax Officer assessed the petitioner to sales tax but the first appellate authority set aside the order of assessment under section 23(2)(b) of the Orissa Sales Tax Act, 1947, and remanded the case for fresh assessment. Against the remand order the petitioner filed an appeal before the Sales Tax Tribunal under section 23(3)(a) after paying a fee of one rupee only. The Tribunal called upon the petitioner to pay a court-fee amounting to 5 percentum of the amount in dispute. Against this order the petitioner filed a writ Application under Article 226

of the Constitution: *Held*, (1) that there can be no demand of tax or penalty until an assessment is made, and there is no assessment quantifying the liability after an original order of assessment is set aside on appeal and consequently there can be no demand of the tax until further assessment, if any, is made in pursuance of the remand order; (2) that as the petitioner did not admit that any amount was payable by him, there existed no difference between the amount demanded and the amount admitted. The difference was indeterminable at the stage when the appeal was filed before the Tribunal, and as no amount in dispute could be determined within the meaning of rule 85 of the Orissa Sales Tax Rules, 1947, the fee payable was only the minimum of one rupee. A writ of *certiorari* can be issued not only in cases of illegal exercise of jurisdiction but also to correct errors of law apparent on the face of the record.—*SRI GOVINDARAM SARAF v. STATE OF ORISSA* [1963] 14 S.T.C. 622 (Ori.).

Powers of Tribunal—Failure to submit return—Seizure of account books and best judgment assessment on basis of seized books—Prosecution for not submitting return—Acquittal for not proving beyond reasonable doubt connection of accused with accounts—Whether finding of criminal court binding on Tribunal—Whether precludes them from arriving at independent conclusion.—*MACHERLAPPA & SONS v. GOVERNMENT OF ANDHRA (NOW ANDHRA PRADESH)* [1958] 9 S.T.C. 156 (A.P.).

Power to rehear case.—In his appeal to the Appellate Tribunal under section 12-A of the Madras General Sales Tax Act, 1939, against an order of the Commercial Tax Officer an assessee may be permitted to object to his liability in respect of an amount of turnover that was not disputed before the Commercial Tax Officer. Section 12-A (4) should be construed as enabling the Appellate Tribunal to rehear the case and the exercise of that power should not be circumscribed by consideration of whether the entire turnover has at all stages been disputed. Sub-section (4) deliberately uses wide words to enable the Tribunal to take into consideration the law and the facts as at the time of hearing the appeal, and should technical difficulties arise, they can be adjusted by directing necessary amendments. The jurisdiction to make just orders being there, whether it should be exercised in the particular circumstances is a matter of discretion. *Kalam Somasundaram Chettiar & Sons v. The State of Madras* [1955] (6 S.T.C. 304) distinguished.—*A. THIPPANNA RAYAPPA v. THE GOVERNMENT OF ANDHRA* [1957] 8 S.T.C. 660 (A.P.).

Power to remand case.—The expression “pass such orders thereon as it thinks fit” in section

22(4) of the Mysore Sales Tax Act, 1957, is an expression of wide import. An order of remand can be properly brought within that expression. Therefore the Appellate Tribunal has the power to remand a case. *Kalam Somasundaram Chettiar and Sons v. State of Madras* [1955] (6 S.T.C. 304; 1955 M.W.N. 1030) and *The State U.P. v. Jaipuria Brothers* [1961] (12 S.T.C. 248) referred to.—*C. GOVINDASWAMY v. STATE OF MYSORE* [1963] 14 S.T.C. 65 (Mys.).

—Additional evidence should not be permitted at the appellate stage in order to enable one of the parties to remove certain lacuna in presenting the case at the proper stage and to fill in gaps. Unless the appellate authority finds the record as it stands not sufficient for deciding the appeal, fresh evidence cannot be permitted. Where the Appellate Tribunal was certain that the evidence already produced was insufficient to include an item in the dealer's turnover and the taxing authority was not asking for any fresh evidence to be produced, no fresh evidence could be admitted and if the Tribunal could not take fresh evidence, it could not remand the case for that purpose.—*MOOKKEN DEVASY OUSEPH AND SONS v. THE STATE OF KERALA* [1960] 11 S.T.C. 323 (Ker.).

Power to admit additional grounds.—The assessee was a building contractor. The Sales Tax Officer assessed him to tax under section 12(5) of the Orissa Sales Tax Act, 1947, and also imposed a penalty on him for his failing to get himself registered as a dealer. The assessee appealed against the order imposing penalty but did not challenge the assessment order. While his appeal was pending before the Sales Tax Tribunal, the Supreme Court delivered judgment in *The State of Madras v. Gannon Dunkerley and Co. Ltd. (Madras) Ltd.* [1958] (9 S.T.C. 353). The assessee thereupon filed additional grounds of appeal challenging the original order of assessment. The Tribunal admitted the additional grounds, set aside the order of assessment and passed an order directing refund of the tax paid by the assessee. On a reference under section 24(1) of the Act: *Held*, (1) that the assessee's appeal was confined to the question of penalty and the Tribunal had not got any general dispensing power to reopen assessments, which had become final under section 22 by reason of the conduct of the assessee in not challenging the same at the appropriate time, and to revise or modify the same in the light of subsequent development of case law. The power of the Tribunal under section 23(3) to take additional evidence was limited to the questions that were pending before the Tribunal; (2) that the Tribunal was not purporting to act under section 14 of the Act nor was any application under

that section made before it. The Tribunal was functioning as a second appellate authority over the order of the Assistant Collector of Sales Tax and its powers were strictly limited by sections 22 and 23; (3) that therefore the Tribunal was not right in admitting additional grounds for granting relief and the order of the Tribunal directing the refund of tax was not proper.—*THE STATE OF ORISSA v. LAKHOO VARJANG* [1961] 12 S.T.C. 162 (Ori.).

Power to issue directions to officers in regard to administration of non-statutory matters.—See *S. T. SOMASUNDARAM PILLAI (FIRM) v. THE GOVERNMENT OF MADRAS* [1963] 14 S.T.C. 170 (Mad.).

Power of review.—The meaning of the word “facts” in section 12-A(6)(a) of the Madras General Sales Tax Act, 1939, should necessarily be ascertained from the context in which it is used and from the purpose for which the section is enacted. The provisions of section 12-A(6) should be construed strictly having regard to the express words used in that section. The word “facts” must be taken to mean something different from the evidence to establish those facts. They must relate to the basic facts sought to be proved to sustain a person’s claim. Where the petitioners sought for review of their case under section 12-A(6)(a) on the ground that they were not able, on the first occasion, to place before the Tribunal their evidence to substantiate the plea of commission agency as the documents were in Gujarathi language: *Held*, that as the evidence to substantiate the plea of commission agency was not a new fact within the meaning of section 12-A(6)(a), the review petition was not maintainable.—*CHANDAJI KUBAJI AND COMPANY v. THE STATE OF ANDHRA* [1956] 7 S.T.C. 332 (Andh.) affirmed by S.C. in [1960] 11 S.T.C. 451 see below.

—The provision in section 12-A(6)(a) of the Madras General Sales Tax Act, 1939, permits a review when through some oversight, mistake or error the necessary facts, basic or evidentiary, were not present before the Tribunal when it passed the order sought to be reviewed. But it is doing great violence to the language of the sub-section to say that an intentional or deliberate withholding or suppression of evidence in support of a plea or contention or a basic fact urged before the Tribunal, is comprehended within the expression “facts which were not before it (Tribunal) when it passed the order”. An assessee is therefore not entitled to ask for a review under section 12-A(6)(a) if there is deliberate negligence and intentional withholding of evidence.—*CHANDAJI KUBAJI & Co. v. THE STATE OF ANDHRA PRADESH* [1960] 11 S.T.C. 451 (S.C.).

—The word “facts” in section 12-A(6)(a) of the Madras General Sales Tax Act, 1939, may be taken to have been used in the sense in which it is used in the law of evidence, that is to say, as including the *factum probandum* or the principal fact to be proved and the *factum probans* or the evidentiary fact from which the principal fact follows immediately or by inference. “Facts” may be either “facts in issue” which are the principal matters in dispute or relevant facts which are evidentiary and which, directly or by inference, prove or disprove the “facts in issue”. Facts might be evidentiary and relevant to establish a plea of non-liability taken by the assessee at the original hearing but not substantiated by evidence or to a plea of non-liability not taken at the original hearing but sought to be raised and supported by evidence at the stage of review. If, owing to the impossibility or impracticability of producing crucial documentary or oral evidence at the original hearing, an assessee’s plea of non-liability to tax is rejected and that evidence is subsequently forthcoming and is placed before the Appellate Tribunal at the time of review, the application for review would be one “on the basis of facts which were not before it when it passed the order” within the meaning of section 12-A(6)(a). Where all the evidence and materials were placed before the Appellate Tribunal at the original hearing but the Tribunal by a mistake omitted to record its finding on an issue or point raised for its decision, section 12-A(6)(a) cannot be of help to the assessee; but the omission can be rectified under rule 18(1) as a mistake apparent on the record or by a revision to the High Court and a remit to the Tribunal under section 12-B(4) for recording its finding on a consideration of the evidence. An order of assessment or an order of the Appellate Tribunal on appeal fixing the liability to tax in a particular year does not operate as *res judicata* or estoppel so as to prevent that decision from being reopened in assessments for subsequent years. *Chandaji Kubaji v. State of Andhra* [1956] (7 S.T.C. 332) overruled.—*STATE OF ANDHRA v. ARISSETY SRIRAMULU* [1957] 8 S.T.C. 153 (Andh.). [In [1960] 11 S.T.C. 451 the Supreme Court has disapproved the view expressed in this decision.]

“On the basis of facts which were not before it when it passed the order”—Meaning of—Omission to cite decision of High Court—Whether a ground for review.—Section 22(6)(a) of the Mysore Sales Tax Act, 1957, constitutes a complete code on the subject of review by the Appellate Tribunal and under that sub-section the Tribunal could review an order passed under sub-section (4) only on the basis of facts which were not before it when it passed the first order. The new material on

which a review could be founded should consist of new facts and those facts should be facts pertaining to the merits of the controversy which the Tribunal had before it. The fact that the person appearing for the State omitted to cite a decision of the High Court when the matter was argued before the Tribunal on the first occasion, is not a "fact" within the meaning of the sub-section. That fact which may be a fact in one sense is not a fact in the sense in which the word "fact" occurring in the sub-section should be understood. The facts to which that sub-section refers are facts germane to the decision of the appeal as distinguished from the law which may be applied by the Tribunal on the basis of those proved facts in a given case. Every Tribunal should be presumed to be conversant with every decision of this Court in the sphere in which it functions. If it is not, and so there is a wrong decision, the matter is one for appeal and not for review. The quality and content of the power exercisable under section 22(6)(a) are quite distinct from those of the power exercisable under rule 38 of the Mysore Sales Tax Rules, 1957. While under the Act a review is possible on the basis of a new fact, under that rule what can be rectified is an error apparent on the face of the record. The ground for the exercise of a review is therefore not the same as that on which a rectification is authorised. *Ellem v. Basheer* [1875] (I.L.R. 1 Cal. 184) relied on.—*SRI VENUGOPALASWAMY & CO. v. THE STATE OF MYSORE* [1968] 21 S.T.C. 86 (Mys.).

Power to review order dismissing appeal for default.—Section 12-A(6)(a) of the Madras General Sales Tax Act, 1939, does not restrict the power of the Tribunal to review orders passed on merits under section 12-A(4). The Tribunal has the power, under sub-section (6)(a), to review an order passed dismissing an appeal for default.—*PINNEPALLI SIVANANDAPPA & BROS., HINDUPUR v. THE STATE OF ANDHRA PRADESH* [1961] 12 S.T.C. 793 (A.P.).

Misapprehension of counsel resulting in withdrawal of appeal and consequent dismissal—Whether review is maintainable.—See *THANDAVA RAO v. STATE OF MADRAS* [1964] 15 S.T.C. 22 (Mad.) under REVIEW.

Board of Revenue—Power of revision—Bar to the exercise of power—Belated filing of appeal to Appellate Tribunal but appeal rejected in limine by Tribunal—Whether "order has been made the subject of an appeal to the Appellate Tribunal".—See *ERODE YARN STORES v. THE STATE OF MADRAS* [1963] 14 S.T.C. 724 (Mad.).

Appellate Tribunal—Revision pending before Commissioner when Mysore Sales Tax (Amendment)

Act, 1963, came into force—Duty of Tribunal to decide it as appeal.—Every revision petition presented to the Commissioner before section 21(2) of the Mysore Sales Tax Act, 1957, was amended by the Mysore Sales Tax (Amendment) Act, 1963, and which was still pending before the Commissioner, stood statutorily transferred to the Appellate Tribunal and became transformed into an appeal, which that Tribunal was under a duty to decide under section 22 of the Act. Once the revision petition became an appeal in that way, the Appellate Tribunal could not refuse to hear it on the ground that the persons who had presented the revision petitions had invoked the *suo motu* power of the Commissioner.—*THE STATE OF MYSORE v. GAYATHRI TRADING CO. AND ANOTHER* [1966] 18 S.T.C. 349 (Mys.).

Appeal to Collector

Revision application without first filing appeal—Maintainability.—An application for revision to the Deputy Commissioner under section 22 of the Bombay Sales Tax Act, 1946, against the order of assessment was maintainable even though the applicant had not appealed in the first instance to the Assistant Commissioner under section 21.—*SHAH KHMJI SHAMJI v. THE STATE OF BOMBAY* [1951] 2 S.T.C. 158.

—A revision application under section 22 of the Bombay Sales Tax Act, 1946, will lie to the Collector of Sales Tax without first filing an appeal under section 21.—*SHRI GOPALAKRISHNA CLOTH STORES v. THE STATE OF BOMBAY* [1952] 3 S.T.C. 18.

Appeal to Board of Revenue

Appeal to Board of Revenue against appellate order—Scope of rule 53(4), C. P. & Berar Rules.—The Sales Tax Officer assessed the assessee to sales tax on a certain amount. The assessee applied for a review of the order of assessment but it was dismissed. An appeal to the Assistant Commissioner of Sales Tax was also dismissed. The assessee then preferred a revision to the Commissioner of Sales Tax. The Commissioner did not entertain this revision petition. He also dismissed an application for restoration of the revision petition. Against these orders of the Commissioner the assessee appealed to the Board of Revenue. The Board dismissed the appeal on the ground that as there had already been one appeal against the order of assessment further proceedings could only be taken by way of revision. The assessee thereupon filed an application under Article 226 of the Constitution of India: *Held*, that rule 53(4) of C.P. and Berar Sales Tax Rules was framed in wide terms and

did not admit of any qualifications or reservations and therefore the appeal to the Board of Revenue was maintainable.—**MANMOHAN UDBATTI FACTORY v. THE STATE OF MADHYA PRADESH AND OTHERS** [1955] 6 S.T.C. 32 (Nag.).

Appellate powers—Appeal under section 22B(3) against order of Commissioner under section 22B(1) reopening assessment—Power to stay proceedings arising in pursuance of that order.—As the Board of Revenue has the power to adjudge the correctness of an order passed by the Commissioner under section 22B reopening an assessment, the Board has also the power to stay the fresh assessment proceedings started by the Assistant Commissioner in pursuance of that order of the Commissioner. The general principle that there is no room in a taxing statute for what is called the equitable construction, only applies to the taxing part of the statute and not to the procedural part. Where the Legislature invests an Appellate Tribunal with powers to prevent an injustice, it impliedly empowers it to stay the proceedings which may result in causing further mischief.—**THE BURHANPUR TAPTI MILL LTD. v. THE BOARD OF REVENUE, MADHYA PRADESH, AND OTHERS** [1955] 6 S.T.C. 670 (Nag.).

Maintainability of appeals—Order of Commissioner refusing exemption of cottage and home industries—Whether appealable.—**KISANLAL RADHA-KISAN v. THE STATE** [1952] 3 S.T.C. 336.

Order under section 19, C.P. and Berar Sales Tax Act—"Order" meaning of.—No appeal lies against an order passed by the Sales Tax Commissioner in proceedings before him under section 19 of the Central Provinces and Berar Sales Tax Act, 1947. The essential characteristic of an order is its binding nature, in that the parties to the proceedings which have led to the order cannot get away from it, so long as it has not been set aside by a superior authority. Notwithstanding the use of the word "determine" in section 19, the Commissioner passes no "order" in the sense indicated, in that his conclusions and observations are not binding on the parties before him, who are free to accept or reject them.—**D. M. RANADE AND ANOTHER v. THE STATE** [1952] 3 S.T.C. 112.

Appeal—Withdrawal of appeal to prevent enhancement of assessment.—Where the Board of Revenue allowed an assessee to withdraw his appeal and accordingly dismissed it as not pressed without passing any order on the application by the State Government for enhancement of the assessment: *Held*, that the appeal should not have been dismissed as not pressed and that it was incumbent on the Board to decide the

question of the enhancement of the assessment.—**COMMISSIONER OF SALES TAX, MADHYA PRADESH v. MOHANLAL HARPRASAD** [1966] 17 S.T.C. 1 (M.P.).

Appeal to Sales Tax Tribunal

Maintainability of appeals—Letter offering to drop criminal proceedings if amount by way of composition is paid.—The Collector of Sales Tax found that the appellant had committed offences under section 24(1), clauses (g) and (i) of the Bombay Sales Tax Act. Instead, however, of prosecuting the appellant, the Collector was willing to take action under section 26 and he therefore wrote to the appellant that he would not be prosecuted if he paid Rs. 250 by way of composition. The appellant appealed to the Tribunal: *Held*, that the letter of the Collector could not be construed as an order appealable under section 21 and the appeal was therefore not maintainable. An order evidently means a directive which will compel a party to do a certain thing. If the Collector sanctioned the prosecution of the appellant there would be an order under section 24(2) and an appeal could lie to the Tribunal against it.—**GURMUKHDAS SALAMATRAI v. THE STATE OF BOMBAY** [1952] 3 S.T.C. 99.

Appeal to Tribunal against mere composition of offence.—Where in compounding an offence under section 26 of the Bombay Sales Tax Act, 1946, no order as such was passed by the Sales Tax Authorities and all that preceded the payment amounted to negotiations, no appeal or revision could lie to the Tribunal.—**FIDA ALI SHAIKH ALI DHARMAJWALA v. THE STATE OF BOMBAY** [1952] 3 S.T.C. 58.

Right of State to file cross objections.—The right of filings cross objections in respect of appeals before the Sales Tax Tribunal, which was conferred on the State Government by the amendment made to the Orissa Sales Tax Act, 1947, by the Amendment Act (XX of 1957), extended also to those appeals before the Tribunal which were transferred to it by operation of law by virtue of section 11(1) of the Amendment Act of 1957.—**M. A. TULLOCK & Co. v. STATE OF ORISSA** [1961] 12 S.T.C. 278 (Ori.).

—Whether extends to pending revisions before Collector which were transferred.—The right of filing cross objections in respect of appeals before the Sales Tax Tribunal, which was conferred on the State Government by the amendment made to the Orissa Sales Tax Act, 1947, by the Amendment Act (XX of 1957), extended also to those appeals before the Tribunal which were transferred to it by operation of law

by virtue of clause (ii) of sub-section (1) of section 11 of the Amendment Act of 1957.—**RAM-CHANDRA BALARAM v. COMMISSIONER OF SALES TAX, ORISSA** [1960] 11 S.T.C. 480 (Ori.).

Dismissal of appeal for default—Legality.—When in a notice for the hearing of appeal before the Sales Tax Tribunal the appellant was informed that even if he failed to appear on the date of hearing, the appeal would be “disposed of on merits *ex parte*”, the notice was not invalid, but the Tribunal could not dismiss the appeal for default.—**RAMANUJADAS BALAKISHANDAS v. THE STATE OF ORISSA AND OTHERS** [1959] 10 S.T.C. 456 (Ori.).

Appeal to High Court

Scope of section 12-C (1), Madras Act—Board of Revenue—Order on revision application by assessee—Appeal to High Court against such order—Maintainability.—Section 12-C(1) of the Madras General Sales Tax Act, 1939, does not enable an appeal to be filed from orders of revision passed by the Board of Revenue where the assessee has invoked its revisional jurisdiction by an application under section 12(3)(ii). An appeal lies to the High Court under section 12-C(1) only in those cases where the matter has been taken up by the Board *suo motu*.—**K. V. KANDASWAMI GOUNDER AND BROTHERS v. THE STATE OF MADRAS** [1957] 8 S.T.C. 603 (Mad.).

—Board of Revenue—Revision application by assessee—Rejection by Board as not maintainable—Whether appeal lies to High Court.—The assessee sought to file appeals to the High Court under section 23 of the Andhra Pradesh General Sales Tax Act, 1957, against the orders of the Board of Revenue rejecting as not maintainable the revisions filed by the assessee under section 20(1) of the Act. The office raised an objection that the appeals were not maintainable. On a reference to the Court: *Held*, that section 20(1) does not provide for a right of revision at the instance of the assessee, but only provides for revision by the Board of Revenue *suo motu*, and under section 23(1) appeal lies to the High Court only against the orders passed by the Board *suo motu*. Therefore the appeals were not maintainable. **K. V. Kandaswami Gounder and Brothers v. The State of Madras** [1957] (8 S.T.C. 603) followed. **Mela Ram and Sons v. Commissioner of Income-tax, Punjab** [1956] (29 I.T.R. 607; 1956 S.C.J. 374), **Commissioner of Income-tax v. Shahzadi Begum** [1952] (21 I.T.R. 1; (1952) 1 M.L.J. 51), **Commissioner of Sales Tax v. Ramakaran Agarwalla** [1962] (13 S.T.C. 407) and **Burmah Shell Oil Storage and Distributing Company of India Ltd. v. Board of Revenue, Andhra Pradesh** [1963] (14 S.T.C. 13) referred to.—**KALLURI**

BHEEMALINGAM AND OTHERS, In re [1967] 19 S.T.C. 116 (A.P.).

—Board of Revenue—Suo motu power of revision—Revision application by assessee—Maintainability—Right of appeal to High Court.—The jurisdiction vested in the Board of Revenue under sec. 20(1) of the Andhra Pradesh General Sales Tax Act, 1957, can be exercised *suo motu* only and not on the application by the assessee and an appeal lies to the High Court under sec. 23(1) only against the orders passed by the Board *suo motu*. **Kalluri Bheemalingam and Others, In re** [1966] (19 S.T.C. 116; (1964) 2 An. W.R. 9) followed.—**SREE RAMACHANDRA GINNING AND OIL MILLS AND OTHERS v. THE STATE OF ANDHRA PRADESH** [1967] 19 S.T.C. 354 (A.P.).

Appeal to Federal Court

Against order of High Court dismissing application to direct Board of Revenue to state a case.—Section 21 of the Bihar Sales Tax Act, 1944, provides that if the Board of Revenue refuses to make a reference to the High Court, the applicant may apply to the High Court against such refusal, and the High Court, if it is not satisfied that such refusal was justified, may require the Board of Revenue to state a case and refer it to the High Court. The section also provides that “the High Court upon the hearing of any such case shall decide the question of law raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded and shall send to the Board of Revenue a copy of such judgment under the seal of the Court.....and the Board shall dispose of the case accordingly”: *Held*, that no appeal lay to the Federal Court against an order of the Patna High Court dismissing an application under section 21(3) for directing the Board of Revenue, Bihar, to state a case and refer it to the High Court. Such an order is not a “final order” within the meaning of clause 31 of the Letters Patent of the Patna High Court and it is also not an order passed by the High Court in the exercise of either its appellate or original jurisdiction within the meaning of the said clause. **Sri Mahant Harihar Gir v. Commissioner of Income-tax, Bihar and Orissa** [1941] (9 I.T.R. 246; A.I.R. 1941 Pat. 225) and **Tata Iron and Steel Company v. Chief Revenue Authority, Bombay** [1923] (50 I.A. 212) applied.—**SETH PREMCHAND SATRAMDAS v. THE BIHAR STATE OF** [1950] 1 S.T.C. 313 (S.C.).

Appeal to Supreme Court

Lies only from judgment, decree or final order.—An appeal to the Commissioner of Sales Tax was not admitted on the ground that the applicant had not deposited the tax assessed under the

proviso to section 22(1) of the Central Provinces and Berar Sales Tax Act, 1947. The applicant thereupon made an application to the High Court under Article 226 of the Constitution of India for a direction to the Commissioner to admit the appeal even though it had not deposited the tax assessed. The High Court rejected the petition. The applicant thereupon applied for leave to appeal to the Supreme Court against that decision under Article 133: *Held*, that the decision of the High Court could not be regarded as a "judgment" or a "final order" and therefore leave to appeal to the Supreme Court under Article 133 could not be granted. The test for determining the finality of an order is whether the judgment or the order finally disposes of the rights of the parties. The mere fact that the order decides an important and even a vital issue is by itself not material unless the decision puts an end to the suit. The finality must thus be a finality in relation to the suit. Further in order that a judgment or a final order must be appealable to the Supreme Court it must affect the merits of the case between the parties by determining some right or liability.—*HOUSEN KASAM DADA (INDIA) LTD., CALCUTTA v. THE STATE GOVERNMENT OF MADHYA PRADESH, NAGPUR, AND OTHERS* [1952] 3 S.T.C. 289 (Nag.).

Against decision of High Court on reference.—*Per SARJOO PROSAD and RAI, JJ.; SHEARER, J., contra.*—The decision of the High Court on a reference by the revenue authorities under section 21 (3) of the Bihar Sales Tax Act, 1944, is merely a sort of opinion or advice and is not a judgment within the meaning of that term as used in Article 133 of the Indian Constitution. The decision also does not arise out of a "civil proceeding" within the meaning of that Article. Consequently an application for leave to appeal to the Supreme Court against such a decision under Article 133 of the Indian Constitution is not maintainable. (*Per SARJOO PROSAD and RAI, JJ.*).—The application is not maintainable under sections 109 and 110 of the Civil Procedure Code inasmuch as the decision is neither a decree nor a final order within the meaning of those sections. There is also no right of appeal under clause 31 of the Letters Patent of the Patna High Court. (*Per REUBEN, J., in the Order of Reference.*)—A reference to a third Judge of the High Court on a difference of opinion between two Judges in a reference under section 21 (3) of the Bihar Sales Tax Act, 1944, is not competent either under clause 28 of the Letters Patent or section 98 of the Civil Procedure Code. But the Chief Justice can mould a convenient form of procedure and refer it to a

third Judge.—*TOBACCO MANUFACTURERS (INDIA) LTD. v. THE STATE* [1951] 2 S.T.C. 73 (Pat.).

—*Per CURIAM (HIDAYATULLAH, DEO and SEN, JJ.)*—The decision of the High Court in *Shriram Gulabdas v. Board of Revenue, Madhya Pradesh and Another* [1952] 3 S.T.C. 343 on a reference by the Board of Revenue under section 23(3) of the C.P. and Berar Sales Tax Act, 1947, did not arise out of a "civil proceeding" within the meaning of Article 133 of the Constitution of India and therefore leave to appeal to the Supreme Court could not be granted under that article. The proceedings under section 23 deal with matters pertaining to liability and assessment of tax and can properly be regarded as revenue proceedings. They are not civil proceedings. (*Per DAS and SEN, JJ.; HIDAYATULLAH, J., contra.*)—The case however involved a substantial question of law as to the interpretation of the Constitution and the decision of the High Court under section 23 (5) is "a judgment or final order in other proceedings" within the meaning of Article 132 (1) of the Constitution. Therefore leave to appeal to the Supreme Court can be granted under Article 132 (1). (*Per DAS and SEN, JJ.*)—The words "other proceedings" in Article 132 (1) are words of wide amplitude and include all proceedings other than civil or criminal proceedings. They thus include revenue proceedings. The term "judgment" is used in Article 132(1) in the wider sense to include any decision given by the High Court on a question or questions at issue between the parties to any proceeding properly before the Court which finally determines the rights of parties so far as the Court is concerned. In this sense a decision under section 23 (5) of the Sales Tax Act or under section 66 (5) of the Income-tax Act is a "judgment". It finally determines the rights of the parties so far as the High Court is concerned though the Tribunal may have to reopen the assessment proceedings and make or order further enquiry to give effect to the decision of the High Court. (*Per HIDAYATULLAH, J.*)—Granting that revenue proceedings are included in the expression "other proceeding" in Article 132 (1) the decision of the High Court under sec. 23 (5) cannot be said to fall within the phrase "judgment, decree or final order" as used in that article. The jurisdiction exercised by the High Court, whether it be under the Income-tax Act or the Sales Tax Act, is merely advisory and consultative and the opinion given on the questions mooted neither ranks as a "final order" nor even as a "judgment". The order does not decide the controversies but merely gives expression to an opinion for the guidance of the referring

authority. The opinion, though binding on the Board of Revenue, is not on an "issue" and is not "sufficient for the final disposal of the case".—**SHRIRAM GULABDAS v. BOARD OF REVENUE (M.P.), NAGPUR, AND ANOTHER** [1953] 4 S.T.C. 340 (Nag.).

—The High Court in coming to its conclusion on a reference under section 25 of the Bihar Sales Tax Act, 1947, is acting only in an advisory capacity and it cannot go beyond the questions referred to it by the Board of Revenue. The scope of the appeal to the Supreme Court against such a decision, even by special leave, cannot be extended beyond the scope of the controversy that could have been legally raised before the High Court.—**DAMODAR VALLEY CORPORATION v. STATE OF BIHAR** [1961] 12 S.T.C. 102 (S.C.).

—*Writ appeal to Supreme Court when no appeal is filed against High Court's order refusing to direct Tribunal to refer question.—Maintainability.*—See **CHANDRA BHAN GOSAIN v. THE STATE OF ORISSA** [1963] 14 S.T.C. 766 (S.C.).

Against decision of High Court on reference under section 24, Cochin Sales Tax Act, 1121.—Under Article 133 of the Constitution of India an appeal lies to the Supreme Court only "from any judgment, decree or final order in a civil proceeding". A judgment in a Sales Tax Reference delivered by the High Court under section 24, sub-section (5), of the Cochin Sales Tax Act (XV of 1121) is not a "judgment, decree or final order" as contemplated by Article 133.—**SALES TAX COMMISSIONER (FIRST MEMBER, BOARD OF REVENUE, KERALA) v. M. PERES & Co., LTD.** [1957] 8 S.T.C. 812 (Ker.).

Against decision of High Court on reference under Sales Tax Act—Whether leave to appeal to Supreme Court can be granted.—The decision given by the High Court on a reference under section 44(1) of the Madhya Pradesh General Sales Tax Act, 1958, is in the exercise of its advisory or consultative jurisdiction and therefore neither under Article 132(1) nor under Article 133 of the Constitution a certificate for appeal to the Supreme Court can be granted against such a decision.—**COMMISSIONER OF SALES TAX, MADHYA PRADESH, INDORE v. MOHAMMAD HUSSAIN RAHIM BUX** [1965] 16 S.T.C. 302 (M.P.).

Against order of High Court relating to provisional assessment.—The assessee applied for leave to appeal to the Supreme Court under Article 133 of the Constitution of India against a decision of the High Court confirming that of the Appellate Tribunal under the Madras General Sales Tax Act, 1939. The case related to the interpretation of rule 18(2) of the Madras General Sales Tax (Turnover and Assessment) Rules,

1939, on which there was no authoritative pronouncement by the Supreme Court and it satisfied the pecuniary test laid down in Article 133(1). The order of the High Court affected the tax liability of a large section of the mercantile community engaged in the production of groundnut oil, but it related only to a provisional assessment under rule 15 of the Turnover and Assessment Rules: *Held*, that although the case involved a substantial question of law and satisfied the pecuniary test, the order of the High Court related only to a provisional assessment and was in the nature of an interlocutory order. It was not a final order in a civil proceeding within the meaning of Article 133(1) and therefore leave to appeal to the Supreme Court could not be granted.—**T. A. THANGAVELU CHETTIAR AND COMPANY AND ANOTHER v. THE GOVERNMENT OF MADRAS** [1955] 6 S.T.C. 72 (Mad.).

Decision of High Court on appeal under section 12-C, Madras General Sales Tax Act, 1939—Whether arises out of civil proceeding—Right of appeal—Constitution of India, Article 133.—A decision of the High Court on an appeal under section 12-C of the Madras General Sales Tax Act, 1939, does not arise out of a civil proceeding within the meaning of Article 133 of the Constitution of India and therefore a petition for leave to appeal to the Supreme Court under that Article against such a decision is not maintainable.—**THE STATE OF MADRAS v. THE MADURA MILLS Co., LTD.** [1964] 15 S.T.C. 207 (Mad.).

Leave to appeal, whether can be granted.—The question whether moneys voluntarily paid as tax by an assessee under a law to which the assessee has submitted but which is later declared invalid is refundable or not is a question of great public importance. A judgment of the Judicial Committee of the Privy Council on that point is not now binding upon either the High Court or the Supreme Court. Therefore in the absence of a decision of the Supreme Court on that question it cannot be said that the question has been authoritatively determined. But where the amount involved in the appeal was very small, leave to appeal to the Supreme Court against a decision of the High Court on that question in favour of the assessee should not be granted unless the State was prepared to pay the costs which would be incurred by the assessee.—**THE SALES TAX OFFICER, BANARAS, AND OTHERS v. KANHAIYA LAL MAKUND LAL SARRAF** [1956] 7 S.T.C. 658 (All.).

Article 136, Constitution of India.—There is no distinction in the scope of the exercise of the power under Article 136 of the Constitution of

India at the stage of application for special leave and at the stage when the appeal is finally disposed of and it is therefore open to the Supreme Court to question the propriety of the leave granted even at the time of the hearing of the appeal. Sections 23, 24 and 25 of the Bihar Sales Tax Act, 1947, cannot override the provisions of the Constitution nor affect the power of the Supreme Court under Article 136. The decision of the High Court under section 25 is subject to the power of the Supreme Court under Article 136; so also the determination or order of any of the assessing authorities which are tribunals within the meaning of that article. Although the words of Article 136 are very general and the Supreme Court has under that article the power to grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India, the question whether in particular circumstances the power should be exercised or not must be decided on the facts of each case, having regard to the practice of the Supreme Court and the limitations which the Supreme Court itself has laid down with regard to the exercise of its discretion. To justify the exercise of the discretion under that article there must be special and exceptional circumstances. The Sales Tax Authorities disallowed certain deductions claimed by the appellant for three periods of assessment and the Board of Revenue also dismissed the appellant's petitions for revision under section 24 of the Bihar Sales Tax Act, 1947. The appellant then moved the Board under section 25(1) to state a case to the High Court but the Board refused to state a case. In respect of the first two periods the High Court also dismissed the applications made to it requiring the Board to state a case. In respect of the third period the High Court directed the Board to state a case on a question and, in due course, answered against the appellant the question referred by the Board. After the orders of the High Court refusing to direct the Board to state a case for the first two periods and directing the Board to state a case for the third period, the appellant made applications to the Supreme Court under Article 136 for special leave to appeal (1) from the orders of the Board of Revenue passed on the two applications in revision as respects the first two periods, and (2) from the order of the Board deciding that no question of law arose for a reference as respects the third period. The Supreme Court granted special leave but when the appeals came on for hearing the question arose whether the appellant was entitled to be heard on merits when special leave was neither asked for nor granted in

respect of the subsequent orders of the High Court relating to the assessments which had then become final between the parties: *Held*, that the appellant was not entitled to ask the Supreme Court to exercise its power under Article 136, because there were no special circumstances justifying the exercise of such power; on the contrary, the circumstances were such that it would be wrong both on principle and authority to allow the appellant to by-pass the High Court by ignoring its orders.—*CHANDI PRASAD CHOKHANI v. THE STATE OF BIHAR* [1961] 12 S.T.C. 506 (S.C.).

Article 136, Constitution of India.—Article 136 of the Constitution confers a discretionary appellate jurisdiction on the Supreme Court against any orders passed by any tribunal in the territory of India. That jurisdiction is not subject to any condition that the party who seeks special leave of the court to appeal from such order should exhaust all his other remedies, though the existence of a statutory remedy may persuade the court not to grant leave to appeal to the applicant.—*MASTER CONSTRUCTION CO. (P.) LTD. v. THE STATE OF ORISSA AND ANOTHER* [1966] 17 S.T.C. 360 (S.C.).

—On an application by the appellant to the Board of Revenue under section 25 of the Bihar Sales Tax Act, 1947, for referring certain questions of law to the High Court, the Board referred a question and the High Court, after reframing the question answered it against the appellant. The appellant appealed to the Supreme Court by special leave obtained under Article 136 of the Constitution of India against the order of the Board of Revenue but did not appeal against the judgment of the High Court: *Held*, (1) that the appellant was not entitled to agitate the correctness or otherwise of the decision given by the Board in regard to the questions which were agitated before the High Court and were decided against the appellant and against which no appeal had been brought; (2) that if there were other questions on which the appellant wanted a reference to the High Court but which were not referred, it was open to the appellant to apply to the High Court for a reference under section 25; (3) that as it had not been shown that there was any breach of the rules of natural justice or violation of any principle of law which would be a good ground for interference by the Supreme Court, the appeal was not maintainable.—*BALLABHDAS AGRAWAL v. THE STATE OF BIHAR* [1962] 13 S.T.C. 278 (S.C.).

Appeal under Article 136 against orders of assessing authority without exhausting all

remedies under Act.—In spite of the wide amplitude of the jurisdiction of the Supreme Court to entertain appeals by special leave under Article 136 of the Constitution, the Supreme Court has imposed certain limitations on its own powers and would refuse ordinarily to entertain such appeals when the litigant has not availed himself of the ordinary remedies available to him at law. Ordinarily the Supreme Court would not allow the High Courts to be by-passed and the appropriate course for an appellant is to exhaust all his remedies before invoking the jurisdiction of the Supreme Court under Article 136. The appellant was assessed to sales tax under the Central Sales Tax Act, 1956, and he appealed directly to the Supreme Court by special leave obtained under Article 136 against an order of the assessing authority, without exhausting all his remedies under the Act. There were no special circumstances in the case and the facts had not been finally determined. The appellant had also not challenged the *vires* of the Act or of any other law: *Held*, that the appeal was incompetent. *Mahadaya Premchandra v. Commercial Tax Officer, Calcutta* [1958] (9 S.T.C. 428; [1959] S.C.R. 551) and *State of Bombay v. Ratilal Vadilal* [1961] (12 S.T.C. 18; A.I.R. 1961 S.C. 1106) distinguished. *Chandi Prasad Chokhani v. State of Bihar* [1961] (12 S.T.C. 506) and *Kanhaiyalal Lohia v. Commissioner of Income-tax, West Bengal* (Civil Appeals Nos. 347-350 of 1960; Supreme Court Judgment dated 17th July, 1961) followed.—*RAM SARAN DAS AND BROS. v. COMMERCIAL TAX OFFICER, CALCUTTA, AND OTHERS* [1962] 13 S.T.C. 6 (S.C.).

Appeal under Article 136—Challenge of decision on new grounds—Whether permissible.—A person appealing to the Supreme Court under Article 132 of the Constitution may not challenge the correctness or propriety of the decision appealed against on grounds other than those on which the certificate is granted, unless the Supreme Court grants him leave to raise other questions. Such leave is generally granted where the trial before the High Court has resulted in grave miscarriage of justice or where the appeal raises such substantial questions, that on an application made to the Supreme Court under Article 136 of the Constitution leave would be granted to the applicant to appeal against the decision on those questions.—*THANSINGH NATHMAL v. SUPERINTENDENT OF TAXES* [1964] 15 S.T.C. 468 (S.C.).

—Appeal by special leave—Two assessment orders—Two revisions each filed by assessee and department—Common judgment of High Court—Two appeals to Supreme Court—Whether sufficient.

—Where in respect of two assessment orders two revisions were filed by the assessee and two by the State and they were disposed of by the High Court by one judgment: *Held*, that the assessee was right in filing only two appeals to the Supreme Court.—*K. G. KHOSLA AND CO. (P.) LTD. v. DEPUTY COMMISSIONER OF COMMERCIAL TAXES, MADRAS DIVISION, MADRAS* [1966] 17 S.T.C. 473 (S.C.).

—Appeal with special leave—Fresh grounds disallowed by Tribunal and High Court—Whether can be raised before Supreme Court—Question of vires of Act—Whether can be raised before taxing officer.—A party approaching a Court in appeal or in revision is restricted to the grounds raised by him in the memo. of appeal or revision. The Court, however, has the power to allow him to raise new questions which have not been included in the memo., but the Court is not bound to do so. Where in the exercise of discretion the Tribunal and the High Court did not allow a party to raise certain contentions, the Supreme Court in an appeal with special leave will not interfere with that discretion. A question as to the *vires* of a statute which a taxing officer has to administer cannot be raised before him.—*CIRCO'S COFFEE COMPANY v. THE STATE OF MYSORE* [1967] 19 S.T.C. 66 (S.C.).

APPROPRIATION

Rule of appropriation—Applicability to sales tax debts.—See under DEPOSIT OF TAX.

APPLICATION FORMS

Sale of application forms.—The assessee-company objected to the inclusion in its turnover a certain sum representing the sale price of forms of application which the assessee sold to candidates for employment under it: *Held*, that the claim for exemption could not be sustained. *H. S. KAMATH, PRESIDENT*, said:—"It is not denied that application forms are 'goods' within the meaning of section 2(d) of the Act. It is also clear that these goods were sold in connection with the business in which the assessee is engaged. No convincing reason has been given why the inclusion of the item in the turnover was against the law. The claim for exemption cannot be sustained."—*SAWATRAM RAMPRASAD MILLS CO. LTD. v. THE STATE* [1952] 3 S.T.C. 314 (M.P.).

ARREARS OF SALES TAX

Arrears of sales tax due by company—Whether directors personally liable.—The directors of a limited liability company cannot be made personally liable for the arrears of sales tax due by the company. In such a case the taxing authorities

can only proceed against the assets of the company.—*DESIRAJU VENKATAKRISHNA SARMA, In re* [1954] 5 S.T.C. 448 (Andh.).

Assessment of sales tax on company—Recovery of tax from shareholders and their personal assets.—A limited company, incorporated under the Indian Companies Act, is an entity separate and distinct from its shareholders. The shareholders have no interest in the assets of the company and are not personally liable for the debts or liabilities of the company. Where sales tax has been assessed on the company, proceedings for recovery of the tax can only be taken against the assets of the company and any proceedings taken against the shareholders or their personal assets are void and against law.—*L. PARAMESHWARI DAS v. THE COLLECTOR OF BULANDSHAHR* [1955] 6 S.T.C. 399 (All.).

—Arrears of sales tax due by company—Whether managing director can be arrested.—The managing director of a limited company registered under the Indian Companies Act cannot be arrested for the realisation of arrears of sales tax due under the East Punjab General Sales Tax Act, 1948, from the limited company. An incorporated company is a juristic person, a separate entity distinct from any individual shareholder, and the business carried on by the company belongs to it in its juristic capacity, and not to its shareholders.—*SURINDER NATH KHOSLA v. EXCISE AND TAXATION COMMISSIONER, PUNJAB, AND ANOTHER* [1964] 15 S.T.C. 838 (Punj.).

Assessment on firm—Liability of partners.—Where the department only assessed the firm, the arrears of tax are, in the first instance, recoverable from its assets. Until the assets are realised or cannot be found, the action of the taxing authorities to try to realise the amounts of tax from the partners personally is premature. *Quære*—Whether the partners would be personally liable for the balance remaining due.—*LALJI v. ASSISTANT COMMISSIONER, SALES TAX, RAIPUR* [1958] 9 S.T.C. 571 (M.P.).

—Arrears due from firm or partner thereof—Recovery by seizure of movables of another firm in which such partner is also a partner—Legality.—Where a person happens to be a common partner in two firms, the State, while realising the arrears of sales tax due from one of the firms or from him as a partner thereof, is not entitled to seize the movable properties of the other firm, of which also he is a partner, which firm, however, is not liable for the sales tax in question. For realising the arrears of sales tax due from a dealer from and out of his assets, the State can claim and assert only such rights as the dealer himself has over those assets, and cannot claim any higher or

superior right. So long as a partnership is a going concern and there has been no dissolution and settlement of accounts amongst the partners *inter se*, no partner can assert or predicate that he is the owner of any particular share in any particular asset, movable or immovable, and it is only after a dissolution and settlement of accounts that he may become the owner of any item of partnership property depending upon the terms of dissolution and settlement. The charge referred to in section 24 of the Madras General Sales Tax Act, 1959, is a charge on the properties of the person liable to pay the tax under the Act. In the case of assets of a partnership it is impossible to have a conception that any property of the partnership is the individual property of any one of the partners.—*K. O. MOHAMED SULAIMAN & CO. v. STATE OF MADRAS* [1965] 16 S.T.C. 571 (Mad.).

—Arrears due from firm—Arrest of son of partner—Legality.—Where the liability to pay sales tax is that of a partnership firm, the son of a partner of the firm cannot be put under arrest in recovery proceedings of any amount due from the firm in the absence of any statutory provision authorising such action.—*S. UJJAL SINGH v. THE EXCISE AND TAXATION OFFICER, AMRITSAR* [1967] 19 S.T.C. 35 (Punj.).

—Two firms having one common partner—Arrears of tax in respect of one firm—Whether can be recovered from the other firm—Remedy of the department.—S was common partner of a Madras firm and a Nagpur firm, both firms bearing the same name. The other two partners of the Madras firm were unconnected with the Nagpur firm. The Nagpur firm was in arrears of sales tax in respect of certain inter-State sales for periods before the coming into being of the Madras firm. The department being unsuccessful in realising the arrears from the Nagpur firm sought to proceed against the Madras firm on the ground that the Madras firm should be regarded as the same entity as the Nagpur firm. On a writ petition filed by the Madras firm: *Held*, (1) that the department was wrong in law in treating the two firms as one, merely because there was a common partner, and hence the arrears due from the Nagpur firm could not be realised from the Madras firm; (2) that though the common partner was jointly and severally liable for the tax amount, his interest in the Madras firm could not be attached, the remedy of the department being to proceed against the Nagpur firm or to proceed against the separate properties of the partners of that firm including the common partner. In the eye of law, all the partners are joint owners of the entire

partnership property, be it movable or immovable. No one partner can point to any tangible item of partnership property as exclusively belonging to him. Therefore, it is not possible in law to proceed against any tangible property of a partnership firm to recover the debt due from any one of the partners. The Government as the creditor of a partner cannot claim a larger right or interest in the partnership property than the debtor-partner himself is entitled to claim. *Ajudhia Pershad Ram Pershad v. Sham Sunder* [1947] (A.I.R. 1947 Lah. 13) and *A. Narayanappa v. B. Krishnappa* [1959] (A.I.R. 1959 A.P. 380) referred to.—CENTRAL GLASS FACTORY (MADRAS) FIRM *v.* SPECIAL COMMERCIAL TAX OFFICER, NON-RESIDENT CIRCLE, HYDERABAD, AND ANOTHER [1967] 20 S.T.C. 69 (A.P.).

Attachment of property as belonging to partner—*Collector overruling objections filed by wife of partner that property belongs to her*—*Petition under Art. 226 to quash order of Collector*—*Maintainability*—*Proper remedy*.—The husband of the petitioner was a partner in a firm from which sales tax was due to the State. In proceedings for the recovery of the amount of sales tax as arrears of land revenue the Collector attached a house. The petitioner filed objections stating that the house belonged to her and could not therefore be attached. The Collector overruled the objections on the ground that the petitioner failed to produce evidence to show that the house was purchased from her stridhan property. The petitioner thereupon filed an application under Article 226: *Held*, that the petition was not maintainable inasmuch as a question of title could not satisfactorily be decided in a petition under Article 226 on the strength of affidavits filed by interested parties and that the petitioner had a right to file a regular civil suit for appropriate reliefs and that remedy was equally efficacious and more appropriate than the remedy that the petitioner had sought.—*SHRIMATI BHUWANESHWARI DEVI v. SALES TAX OFFICER, KANPUR, AND OTHERS* [1957] 8 S.T.C. 506 (All.).

Arrears of tax—*Whether can be recovered from person alleged to be partner of assessee*—*Proper procedure*.—When the Collector sought to collect the arrears of sales tax due from an assessee, he represented to the authorities that the petitioner was his partner in the business and as such he was equally liable to pay the tax. A demand notice was thereupon served on the petitioner, who denied that he was a partner of the assessee. It was found that no notice was served on the petitioner before assessment was made: *Held*, that the arrears of sales tax could not be recovered

from the petitioner. Under rule 34 of the Hyderabad General Sales Tax Rules, 1950, a dealer or a licensee who enters into partnership in regard to his business has to report that fact to the licensing, registering and assessing authority within 30 days of his entering into such partnership. As this was not done in the present case, if the Sales Tax Authorities considered on the basis of the information obtained by them that the petitioner was really a partner with the assessee, the proper course for them would have been to give him a notice calling upon him to show why he should not be dealt with as such.—*SHANKERLAL KARVA v. THE TAHSILDAR, KARIMNAGAR, AND OTHERS* [1958] 9 S.T.C. 246 (A.P.).

Assessment of Hindu undivided family—*Death of karta*—*Proceedings for recovery of tax by arrest and detention in jail of junior members*—*Legality*.—Sales tax or income-tax assessed on a Hindu undivided family cannot, after the death of the karta, be realised by arrest and detention in prison of the junior members of the family under the Public Demands Recovery Act. If a certificate-debtor is not a natural being but a legal entity, execution by arrest and detention in prison cannot be enforced against such a person, there being no physical body in a legal entity, unless there is a provision made in law that some other natural being shall be as much liable for the dues against a particular legal entity as for the dues against himself. A suit by the junior members of a Hindu undivided family to restrain the realisation of the taxes assessed on the family by their arrest and detention in jail is not barred by section 46 of the Bihar and Orissa Public Demands Recovery Act.—*PRAHLAD RAI BAIROLIYA AND OTHERS v. UNION OF INDIA AND ANOTHER* [1956] 7 S.T.C. 784 (Pat.).

—*Arrears due from Hindu undivided family*—*Arrest of member of family*—*Legality*.—Section 69 of the Punjab Land Revenue Act, 1887, is meant to apply to natural persons and not to artificial persons like a Hindu undivided family, and recovery of arrears of sales tax due from the family as arrears of land revenue cannot be made under that provision by the arrest, detention or confinement in jail of a member of that family. *Kuldip Singh v. Tahsildar, Amritsar* [1958] (34 I.T.R. 164) followed.—*S. UJJAL SINGH v. EXCISE AND TAXATION OFFICER, AMRITSAR* [1967] 20 S.T.C. 35 (Punj.).

—*Recovery of tax from joint Hindu family after its discontinuance*.—If a joint family has discontinued any business, then, according to section 33(4), the family can be assessed as if there was no discontinuance, and it is only after an assessment is made that every member of the family is liable

severally and jointly for the payment of the tax assessed as payable by the family as if he were himself a dealer. If the tax amount cannot be recovered from the member and if the joint family business has been transferred to a firm or association, then the tax payable by a member of the joint family can be recovered from the transferee as laid down in the first proviso to sub-section (4).—**MANGALCHAND AND OTHERS v. SALES TAX OFFICER, NARSINGPUR, AND ANOTHER** [1966] 17 S.T.C. 226 (M.P.).

—When a Hindu undivided family discontinues its business, under rule 22 of the Andhra Pradesh General Sales Tax Rules, 1957, the members thereof become jointly and severally liable for the tax arrears due from the family.—**CHALLA KISTIAH v. THE STATE OF ANDHRA PRADESH AND TWO OTHERS** [1967] 20 S.T.C. 73 (A.P.).

Arrears of tax due from association registered under Societies Registration Act—Attachment of private property of President—Legality.—Where in order to realise the arrears of sales tax due from an association registered under the Societies Registration Act, the Deputy Tahsildar attached and took away the private cash of the President of the association in spite of his protest, the attachment was illegal and would give rise to a claim for damages. Section 17(2) of the Madras General Sales Tax Act, 1939, is intended to confer protection to officers of the Government who, while administering the Act, act under an erroneous view of the law or who proceed in the belief that certain facts exist but later on it turns out that the facts are different. The section cannot be invoked in cases of reckless exercise of authority when there is a total want of *bona fides*.—**THE STATE OF MADRAS, In re** [1958] 9 S.T.C. 169 (Mad.).

Assessment of canteen represented by its honorary secretaries—Recovery proceedings against one secretary personally—Legality.—Where a canteen, represented by its honorary secretaries was assessed to sales tax under the Madras General Sales Tax Act, 1939, in respect of the supply of tiffin to the members of the canteen and steps were taken under section 24(2)(b) of the Madras General Sales Tax Act, 1959, to realise the arrears of tax personally from the petitioner, who happened to be one of the secretaries: *Held*, that no proceedings could be taken under section 24(2)(b) to collect the arrears of tax personally from the petitioner, since the liability was not personal to him. The fact that a creditor who supplied provisions was able to obtain a decree against the petitioner personally would not help the department inasmuch as that

decree was based on the contract between the petitioner and the decree-holder.—**K. PARAMASIVAM PILLAI v. BOARD OF REVENUE, MADRAS** [1963] 14 S.T.C. 972 (Mad.).

Recovery from transferee of immovable property.—A house in Madras City belonging to the assessee was sold by him to R on 18th April, 1958, and from R, the first petitioner purchased it on 11th May, 1961. There were arrears of sales tax due by the assessee for the years 1954-55 to 1956-57 in respect of his business both in Madras City and in South Arcot District. The assessee did not have sufficient means to pay the sales tax. When the house was proposed to be attached and sold in 1963 under the provisions of the Madras Revenue Recovery Act, 1864, in respect of the arrears of sales tax due by the assessee, the first petitioner filed a petition under Article 226 of the Constitution and contended that it was illegal to make her property liable for the arrears of sales tax due by the assessee: *Held*, (1) that it was only if the Court was dealing with a case of enforcement of a charge imposed under section 10 of the Madras General Sales Tax Act, 1939, that it would be necessary to examine the question whether the first petitioner was entitled, as a transferee for consideration without notice, of the benefit of the saving clause in section 100 of the Transfer of Property Act, 1882; (2) that although the Madras Revenue Recovery Act, 1864, makes the transferee of a piece of land liable for arrears of land revenue due upon that land, even if the arrears related to a period anterior to the transfer, that principle cannot be applied to sales tax arrears because neither the Sales Tax Act nor any other enactment makes the transferee of the land of the assessee, a defaulter in respect of the amount of sales tax due by the transferor; (3) that even though for arrears of sales tax due for the business of the assessee in South Arcot District, the necessary certificate under Central Revenue Recovery Act, 1890, from the authorities in South Arcot was received by the authorities in Madras on 12th March, 1959, as the house belonging to the assessee had been sold by him long before that date, the first petitioner and her legal representatives could not be considered as defaulters for the sales tax arrears due by the assessee; (4) that therefore the house belonging to the first petitioner could not be proceeded against under the Revenue Recovery Act for the recovery of arrears of sales tax due by the assessee. *Subbayyagaru v. The Secretary of State for India* [1911] (21 M.L.J. 656) referred to.—**P. KANNAMBA AND OTHERS v. THE BOARD OF REVENUE (C.T.), MADRAS, AND ANOTHER** [1967] 19 S.T.C. 456 (Mad.).

Recovery from surety—*Surety for payment of tax liability—Amount payable under surety bond—Whether can be recovered by coercive machinery provided under Bombay Land Revenue Code, 1879.*—

The Sales Tax Recovery Mamlatdar, who was taking steps to recover the arrears of sales tax and penalty due from H under the Bombay Sales Tax Act, 1953, permitted H to pay the amount in monthly instalments and in consideration of this facility, the petitioner executed a surety bond stipulating that if H committed default in payment of any three monthly instalments, the petitioner would pay to the State the full amount due and payable by H and if the petitioner failed to do so, the State would be entitled to auction the house of the petitioner and to appropriate the sale proceeds in or towards payment of the amount. H committed default in payment of more than three instalments and the entire amount accordingly became due and payable by H to the State. The question was whether the State was entitled to proceed against the petitioner for payment of the tax liability of H under the procedure provided in the Bombay Land Revenue Code, 1879, as if the amount payable by the petitioner were an arrear of land revenue: *Held*, (1) that unless there was some provision of law which authorised the State to recover an amount due from a debtor as an arrear of land revenue, the State could not resort to the coercive machinery provided in the Bombay Land Revenue Code, 1879, for recovering such amount from the debtor; (2) that section 38(5) had no application where what was sought to be recovered was not tax due from an assessee-dealer or penalty due from an assessee-dealer or other person on whom it was levied under section 36 or 37, but an amount due from a surety under a surety bond executed in order to secure payment of the amount of tax or penalty due by the assessee-dealer or other person liable to pay the same under section 36 or 37. What was payable by the petitioner was the amount due under the contract embodied in the surety bond and not tax or penalty; (3) that as there was no provision in the surety bond which declared that the amount due from the petitioner was to be leviable as an arrear of land revenue, the third clause of section 187 of the Bombay Land Revenue Code, 1879, could not be invoked; (4) that therefore the State could not proceed to recover the amount due from the petitioner under the surety bond by following the coercive machinery of the Bombay Land Revenue Code, 1879, and must be left to follow the ordinary remedy of an action at law which every creditor who wished to enforce his debt had against the debtor. *The Bank of India v. Bowman* [1955] (57 Bom. L.R. 345)

referred to.—*JAYANTILAL TRAMBAKLAL PATEL v. B. M. GANDHI, SALES TAX OFFICER* [1965] 16 S.T.C. 1039 (Guj.).

Recovery from trustees—*Assets of firm transferred to trustees for paying creditors rateably—Sale of stock-in-trade—Sale proceeds deposited in bank—Issue of notice to bank under section 39, Bombay Sales Tax Act, 1959, demanding payment of arrears of tax due by firm—Legality.*—A firm having become involved in financial difficulties assigned and transferred to the petitioners, under a deed of arrangement, the stock-in-trade, assets and properties belonging to the firm and its partners upon trust to dispose of the properties and to pay out of the sale proceeds rateably the creditors of the debtor-firm. The petitioners disposed of the stock-in-trade of two firms belonging to the partners and deposited the sale proceeds in a bank. The question was whether the Sales Tax Officer could, by issuing a notice under section 39 of the Bombay Sales Tax Act, 1959, demand from the bank the amount of sales tax due and payable by the two firms: *Held*, that the effect of the assignment was to create a valid title in the trustees and a valid and enforceable trust for the benefit of the creditors as soon as the deed had been executed and the creditors had assented to it. Under the deed the petitioners as trustees became the legal owners of the properties assigned to them, and they had to sell the properties and distribute the sale proceeds rateably among the various creditors. The trustees were not holding the sale proceeds which they deposited with the bank in a separate account in their names as agents of the two firms or any one of them, nor were they the transferees of or successors to those businesses. The bank was not holding the moneys lying in the account for or on account of the firms who were the dealers. The bank was also not a person from whom any amount of money was due to any one of the firms. Therefore the Sales Tax Officer was not entitled to issue a notice upon the bank under section 39. —*SAMPATRAJ CHHOGALALJI AND OTHERS v. V. S. PATEL, SALES TAX OFFICER, AND OTHERS* [1966] 17 S.T.C. 29 (Guj.).

Recovery of tax from company in liquidation.—A company, at the time when it went into voluntary liquidation, had not satisfied a claim by the Commissioners of Customs and Excise for £501, due for purchase tax. A stranger offered to buy the debts of the company and pay the creditors 17s. 6d. in the £. All the creditors accepted the offer except the Commissioners, but they refused, and insisted on levying distress for full satisfaction of the debt of £501: *Held*, that

in the case of a voluntary liquidation the liquidator could come to the court and ask to have the distress stayed, and the court would do so unless there were special circumstances to justify the distress continuing. There were no such circumstances here.—*MARGOT BYWATERS, LTD., In re* [1942] 12 Comp. Cas. 151; [1941] 3 All E.R. 471 [Simonds, J.].

—Where a company was ordered to be wound up on 18th July, 1950, but the notice of demand for the tax assessed under section 11(1) of the Bengal Finance (Sales Tax) Act, 1941, was served on the company on 17th May, 1950, directing payment on or before 30th June, 1950: *Held*, that the tax assessed became due and payable only on 17th May, 1950, when the notice of demand was served on the company and since it remained due on 18th July, 1950, when the winding up order was made, it was entitled to priority under section 230 (1) (a) of the Indian Companies Act, 1913, read with sub-section (5) (a) of the section. *Per CHAKRAVARTI, C.J., and LAHIRI, J.*—The Bengal Finance (Sales Tax) Act, 1941, does not intend that the tax payable under the Act would become due and payable at the time the return became due to be filed. The amount paid under section 10 (3) according to the return cannot be tax payable under the Act in the true sense of the term. The tax is payable on the taxable turnover and the taxable turnover is to be determined by making the various deductions specified in section 5. The assessee can make the deductions as best as he can, on his own understanding of the provisions of section 5 and on his own view of the facts, but before the deductions are checked and finally settled as allowable or disallowable and the taxable turnover is thereby determined, no tax due and payable under the Act can come into existence. The only two types of tax debts under the Sales Tax Act that may possibly come to be considered under section 230 (1) (a) of the Indian Companies Act, 1913, are (i) the balance of tax due according to a return, and (ii) the tax due under an assessment. In both cases, the debt becomes payable only when a notice of demand is served. *Per SINHA, J.*—(1) Sales tax from a dealer chargeable under the Bengal Finance (Sales Tax) Act, 1941, is “due”, immediately upon his gross turnover exceeding the taxable quantum during the period prescribed by the Act. For determining the taxable turnover, all due allowances must be made under secs. 5 and 6 of the Act. But as soon as there is a taxable turnover, the tax is due. (2) But the sales tax payable under the Act becomes “payable” as follows:—(a) Where the dealer has filed his return under section 10(2), and as a condition precedent paid

in, the amount admitted in the return, when the return was filed, and to the extent admitted therein. This however will not apply to any excess paid because to that extent it is not a tax payable under the Act and the question does not arise; (b) Where the dealer has not filed a return or filed a return which is not correct or complete, then as to the amount assessed under section 11(1) and (2), or the amount so assessed less the amount already paid under section 10 (3), together with penalties, if any, payable under the Act, immediately upon the notice under section 11(3) being served upon him in the prescribed form.—*In the matter of RECOLS (INDIA) LTD.* [1953] 4 S.T.C. 271 (Cal.).

—A company went into voluntary liquidation. The Union of India and the State of West Bengal claimed against the company large sums on account of income-tax and sales tax respectively and they sought to realise their claim by execution and attachment of the properties of the company. The liquidators thereupon applied to the High Court for an order staying all attachment and certificate proceedings initiated for realisation of income-tax and sales tax and for an order setting aside the attachment and execution put in force against the estate and effects of the company for realisation of income-tax and sales tax and for other reliefs: *Held*, (1) that except in the case of preferential creditors, the court will as a matter of course and in the absence of special circumstances stay execution proceedings against a company in voluntary liquidation because the result of allowing a judgment-creditor to levy execution would inevitably interfere with the scheme of distribution of the assets *pari passu* amongst the creditors in accordance with section 211 of the Indian Companies Act, 1913; (2) that ordinarily a preferential creditor ought not to be restrained from executing his decree unless there are special circumstances justifying that course; (3) that the Union of India and the State of West Bengal were bound by the provisions of the Indian Companies Act, 1913, and by the scheme of administration of companies in liquidation laid down by that Act and were not entitled to any preferential rights or treatment or to any prerogative save and to the extent expressly provided for in that Act; (4) that the Union of India and the State of West Bengal were entitled to rank as preferential creditors for the year in which demand notices had been served on the company before it went into voluntary liquidation; (5) that on the facts of the case, there were no special circumstances justifying a restraint on the State

of West Bengal from realising by execution its admitted preferential claim for a certain sum. (Difference between stay of suits to establish a claim and stay of execution proceedings pointed out. Desirability of having a disputed claim established in court rather than before the liquidators indicated).—P. P. DE AND COMPANY LTD., *In re* [1951] 2 S.T.C. 114 (Cal.).

—What section 530(1)(a) of the Companies Act, 1956, envisages is the revenue, sales tax etc. which are currently due and payable at the time of the winding up order and it does not include in its ambit arrears of the same. Besides, the section not only requires that the tax etc. should have become due within the relevant period but they should have also become payable within that period. Both these conditions must therefore co-exist before the priority mentioned therein can be claimed. The word “revenues” used in section 530(1)(a) means revenues which have become due and payable as revenues within the twelve months next before the date of the winding up, and not revenues which are recoverable as arrears of land revenue. The mere fact that sales tax was ordered to be realised as arrears of land revenue during the twelve months next before the date of the winding up order, does not entitle that tax to be treated as revenue which has become due and payable within that period so as to be entitled to priority under that section. On an application of the Registrar of Companies, a company was ordered to be wound up by the High Court on 7th August, 1963. The company had been assessed to sales tax prior to 1962 for the years 1954-55 to 1958-59 and in 1964 for the year 1959-60. The Sales Tax Officer filed a claim against the company before the Official Liquidator on account of arrears of sales tax (both Central and State) due from the company for the years 1954-55 to 1959-60. The Official Liquidator accepted the claim for the years 1954-55 to 1958-59, but rejected to give that claim priority under section 530(1) of the Companies Act, 1956. He also rejected the claim for the year 1959-60 on the ground that the assessment orders on which they were based were made without any notice to him and the demand notices in respect of them were not served on him: *Held*, (1) that under section 17 of the U.P. Sales Tax Act, 1948, an assessment made under the Act could be called into question only in the manner laid down in the Act and in no other. Therefore so long as the assessment made in 1964 were not got set aside or modified under the provisions of the Sales Tax Act, they were final and the Official Liquidator was in error in rejecting the claim for the year 1959-60; (2) that the claim for

priority under section 530(1)(a) in respect of sales tax for all the years was rightly rejected by the Official Liquidator.—*In the matter of* NORTHERN INDIA OIL INDUSTRIES LTD.: THE SALES TAX OFFICER, KANPUR *v.* THE OFFICIAL LIQUIDATOR [1968] 21 S.T.C. 470 (All.).

Transfer of business—Recovery of arrears from transferee of property.—There is no provision anywhere in the U.P. Sales Tax Act, 1948, for the recovery of sales tax assessed on a dealer from a transferee of the property belonging to the dealer. The liability to sales tax is of the dealer on whom an assessment of sales tax should be made and the money can be recovered from him or from his assets in case of his death. The Sales Tax Act does not provide for the recovery of the amount from any person other than the assessee or the dealer. The owner of a mill had not paid sales tax for the years 1949 to 1954. He sold the mill in 1955 to the petitioners free of all encumbrances. The question was whether the sales tax assessed for the five years could be recovered from the petitioners by attaching the machinery and building of the mills: *Held*, that so long as the sale deed stood, the sales tax assessed on the previous owner could not be recovered from the petitioners. The dealer is a person and it is the dealer who is liable to pay the sales tax. The machinery or property of a factory or a mill cannot be said to be the dealer nor is there any provision in the Sales Tax Act making the tax a charge on the machinery and other property.—DEVI DAYAL AND OTHERS *v.* THE SALES TAX OFFICER, KANPUR, AND OTHERS [1956] 7 S.T.C. 145 (All.).

Transfer of business—Sales tax due for periods prior to transfer—Distress warrant—Whether transferor or transferee should be proceeded against.—Where a business was transferred in March, 1955, and in respect of the amounts due by way of sales tax for 1951-52 and 1952-53, notices of demand were issued on the transferee and on his failure to comply with the demand, a distress warrant was issued: *Held*, that although under rule 21-A of the Madras General Sales Tax Rules, 1939, both the transferor and the transferee would be liable, the distress warrant should be issued in the first instance to the transferor and only when the amount could not be realised from him the transferee should be proceeded against.—HATIM MAHMOOD *v.* A.C.T.O., MOUNT ROAD, MADRAS [1959] 10 S.T.C. 510 (Mad.).

Transferee of business—Recovery limited to value of assets obtained by transfer—Proper procedure.—Under the proviso to section 27 of the Madras General Sales Tax Act, 1959, arrears of sales tax

due from the transferor of a business can be recovered from the transferee only to the value of the assets he or she had obtained by transfer, and any coercive process to recover the tax arrears under section 24(2)(b) will necessarily be subject to the limits prescribed by that proviso. Therefore if the coercive process under section 24(2)(b) is directed against assets which the transferee did not get by transfer, the proceedings would be illegal. Before proceeding under section 24(2)(b) the right thing for the department to do would be to serve a demand notice on the transferee and call upon him or her to satisfy them as to what were the assets that were transferred to him or her and why they should not be proceeded against for the recovery of the arrears.—*SHIRIN BI MOHAMADALI v. THE DEPUTY COMMERCIAL TAX OFFICER, HARBOUR DIVISION II, MADRAS* [1963] 14 S.T.C. 974 (Mad.).

Applicability to transferee of business of provisions relating to mode of recovery of tax—Order by Certificate Officer granting payment by instalments—Whether binding on Sales Tax Officer.—See *PATNAIK & Co. (PVT.) LIMITED v. COMMISSIONER OF SALES TAX* [1963] 14 S.T.C. 738 (Ori.).

Transfer of business—Arrears of sales tax due from transferor—Whether can be recovered from transferee.—See *TRANSFER OF BUSINESS infra*.

Recovery from legal representative.—An arrear of sales tax is a debt due to the Government and can be collected from the estate of a deceased assessee. If an undivided son governed by Hindu law has succeeded to the estate of his father by right of survivorship, the debt would be binding upon him on the theory of pious obligation. If, on the other hand, the estate of the deceased has devolved on the son by inheritance, the estate would still be subject to the payment of the lawful debts due by the deceased. By virtue of the proviso to section 41 of the Andhra Pradesh General Sales Tax Act, 1957, all arrears of tax and other amounts due at the commencement of that Act might be recovered as if they had accrued or become due under the Act and rule 23 of the Andhra Pradesh General Sales Tax Rules, 1957, provided for the recovery of the tax from the legal representative of a deceased assessee. Rule 23 is valid and it is not illegal either on the ground of excessive and unauthorised delegation of legislative power or on the ground of vagueness or uncertainty. If in the rule-making section it is specifically mentioned that a rule could be made for a particular subject then that provision must be deemed to be an integral part of the enactment.—*ARISSETTI APPALARAJU v.*

ASSISTANT COMMERCIAL TAX OFFICER, BOBBILI [1961] 12 S.T.C. 398 (A.P.).

Recovery—Several modes.—The recovery of tax by the procedure prescribed in the Madras Revenue Recovery Act is one of the modes of realising the tax. But that is not the only mode. The Crown can even sue as on a debt within a period of six years (Article 120 of the Limitation Act). The Crown can also get a decree and realise the debt by attachment of property as an ordinary debt. Suit for taxes is governed by Article 120 of the Limitation Act. Even though tax collectable as arrear of land revenue may not be a first charge, the general principle of law preferring the Crown's debt to that of the subject when both stand on the same footing, nevertheless applies. Thus, the Crown has priority over other unsecured creditors and when the property of an assessee is attached in execution of a simple money decree and money is deposited in Court, since the attachment by a decree-holder creates no right in property, the Crown can step in and recover any tax due to the Government without suit or attachment.—See *PUBLIC PROSECUTOR v. K. C. AYYAPPAN PILLAI AND OTHERS* [1953] 4 S.T.C. 56 (Mad.) and the cases referred to therein.

Procedure for recovery of fine—Whether can be allowed for recovery of tax.—The procedure prescribed under section 386(1)(b) of the Criminal Procedure Code for recovery of fine by execution of the warrant in a civil court can be allowed for the recovery of tax in view of section 19(h) of the General Sales Tax Act, 1125, which provides that the tax so specified "shall be recoverable as if it were a fine under the Code of Criminal Procedure for the time being in force".—*C. M. FRANCIS v. STATE OF KERALA* [1961] 12 S.T.C. 166 (Ker.).

Recovery by Magistrate as fine—Nature of order passed by Magistrate.—The power of the Magistrate to take proceedings for recovery of any tax assessed or any other amount due under the Mysore Sales Tax Act, 1957, from a dealer, as if it were a fine imposed by him, accrues to the Magistrate by virtue of section 13(3)(b) of the Act and not under any provision of the Code of Criminal Procedure. Such proceedings are mere recovery proceedings and the Magistrate does not function or exercise his authority under the Code of Criminal Procedure. Though the procedure for recovery of such amount may be the same as for the recovery of any fine imposed by him, he is competent to recover the amount of tax, only because he is designated under the Sales Tax Act to recover the same. An order passed in exercise of that power conferred under the Sales Tax Act

cannot be said to be an order passed by an inferior criminal court under the Criminal Procedure Code. When no provision has been made in the Sales Tax Act for revision of such an order, sections 435, 436, 438 and 439 of the Criminal Procedure Code cannot be resorted to for interfering with that order. *Dargah Committee, Ajmer v. The State of Rajasthan* [1962] (A.I.R. 1962 S.C. 574) applied. *M. S. Dewakar v. State of Mysore* [1963] (14 S.T.C. 625) explained.—*THE STATE v. G. L. UDYAWAR* [1963] 14 S.T.C. 628 (Mys.).

Whether defaulter can be imprisoned for non-payment of tax and licence fee.—The legislative sanction for the recovery of the arrears of sales tax and licence fee specified in the Magistrate's order under sec. 19 of Travancore-Cochin General Sales Tax Act, 1125, "as if it were a fine" cannot have the effect of placing it in the category of fine imposed as a penal liability. The expression "as if it were a fine" necessarily means that it is not a fine, as understood in law. In respect of the amount specified in the Magistrate's order as recoverable from the defaulter, the direction in section 19 goes only to the extent of adopting the procedure prescribed by the Criminal Procedure Code, 1898, for the recovery of a fine. Section 386 of the Criminal Procedure Code does not sanction the arrest and detention of the defaulter in prison as a means of recovery of the amount specified in the Magistrate's order under section 19 of the Sales Tax Act. Section 64 of the Indian Penal Code cannot also be invoked for enforcing the direction in the Magistrate's order. The direction in the order for the detention of the defaulter in prison can only be sustained in respect of the amount specified as a sentence of fine.—*ADIMA MYTHEEN KUNJU v. THE STATE OF KERALA* [1959] 10 S.T.C. 417 (Ker.).

Whether "as if it were a fine" in section 15(h), Madras Act, a deeming provision—Execution of warrant issued by Magistrate—Applicability of limitation provided in section 70, Indian Penal Code, 1860.—The expression "as if it were a fine" in section 15(h) of the Madras General Sales Tax Act, 1939, is not a deeming provision. On the other hand, the use of such expression shows that "tax, fee or amount so specified" is not to be treated as a fine. The statutory fiction is only for its recovery and not for anything else. Therefore the execution of the warrants issued under section 386(1)(b) of the Criminal Procedure Code, 1898, for recovering the arrears of sales tax specified in the orders of the Magistrate as enjoined in section 15(h) of the Madras General Sales Tax Act, 1939, is not controlled by the limitation provided by section 70 of the Indian

Penal Code, 1860.—*MUHAMMED v. THE COLLECTOR OF PALGHAT* [1967] 19 S.T.C. 475 (Ker.).

Power of arrest, when can be invoked.—In order to invoke the power of arrest under section 48 of the Madras Revenue Recovery Act, 1864, by virtue of section 29 of the Madras General Sales Tax Act, 1959, the Commercial Tax Officer should have not only reason to believe that the assessee is wilfully withholding payment of arrears or has been guilty of fraudulent conduct in order to evade payment, but also that the arrears of tax cannot be liquidated by sale of the property of the defaulter. An officer has therefore no jurisdiction to invoke the powers of arrest under section 48 before satisfying the condition precedent that the arrears of tax demanded from the assessee cannot be liquidated by sale of his properties.—*P. K. HAJI GULAM MOHIDEEN SAHIB v. COMMERCIAL TAX OFFICER, SALEM, AND OTHERS* [1966] 18 S.T.C. 346 (Mad.).

—Under section 48 of the Andhra Pradesh Revenue Recovery Act, 1864, before the Collector can proceed to order the arrest of the defaulter, he must be satisfied that the arrears of revenue cannot be liquidated by the sale of the defaulter's property. Such satisfaction need not necessarily and invariably be arrived at by actually bringing the property of the defaulter to sale, but could be arrived at where the market value of the properties bears an insignificant ratio to the amount due by the defaulter, and the amount that may be realised by the sale of the properties cannot possibly wipe off the tax arrears or even a substantial part thereof. The warrant of arrest may be executed either by a revenue official or by a police official. Section 49 of the Revenue Recovery Act, 1864, imposes no restriction in this regard. *Ali Ahmed v. Collector of Bombay* [1950] (A.I.R. 1950 Bom. 33; 17 I.T.R. 371) distinguished. *Collector of Malabar v. Erimal Ebrahim Hajee* [1957] (32 I.T.R. 124; A.I.R. 1957 S.C. 688) referred to.—*CHALLA KISTAIAH v. THE STATE OF ANDHRA PRADESH AND 2 OTHERS* [1967] 20 S.T.C. 73 (A.P.).

Recovery—Nature of proceedings under Bihar and Orissa Public Demands Recovery Act, 1914.—The power conferred on a Certificate Officer by section 10 of the Bihar and Orissa Public Demands Recovery Act, 1914, to determine whether a certificate-debtor is liable for the whole or any part of the amount for which the certificate was signed is controlled by section 22 of the Orissa Sales Tax Act, 1947, and section 22 is a complete bar to the certificate-debtor raising any question as regards the legality or correctness of the assessment made by the Sales Tax Officer. The

applicant, a P.W.D. contractor, was assessed to sales tax and proceedings under the Bihar and Orissa Public Demands Recovery Act, 1914, were started against him for recovering arrears of sales tax. The applicant's petition under section 9 denying his liability to pay the sum was rejected by the Certificate Officer and the appellate authority dismissed his appeal. The revising authority also rejected his revision petition on the ground that the Certificate Officer exercised his discretion properly in accepting the assessment of sales tax made by the Sales Tax Officer as sufficient for deciding the applicant's liability. Thereupon the applicant filed a petition under Articles 226 and 227 of the Constitution and contended (1) that he was not a "dealer" and was therefore not liable to pay any sales tax, and (2) that the entire proceeding before the Sales Tax Officer was void inasmuch as the preliminary notices for making assessment under section 12 and the subsequent notice of demand after the making of assessment under section 13 were not served on him: *Held*, (1) that the Legislature conferred jurisdiction on the Sales Tax Officer under section 20 of the Sales Tax Act to decide rightly or wrongly the preliminary facts on the basis of which he could make a proper assessment and his decision both on such preliminary facts and on the final assessment of sales tax was expressly made final subject to the remedies provided in that Act itself for appeal, revision and review. No Court in any other proceeding could question his decision; (2) that the Certificate Authorities acted properly in refusing to enter into the question about the legality or the correctness of the assessment and in disallowing the petition of the applicant under section 9 of the Bihar and Orissa Public Demands Recovery Act, 1914; (3) that the applicant was precluded from questioning the validity of the proceeding before the Sales Tax Officer by his own pleadings in the certificate case and there was no material before the Certificate Officer for him to hold that the assessments were not made "under the Sales Tax Act" so as to remove the bar imposed by section 22 on his jurisdiction.—*RAMAKRISHNA PRADHAN v. THE STATE OF ORISSA AND OTHERS* [1952] 3 S.T.C. 248 (Ori.).

—*Certificate signed and filed under section 6, Bihar and Orissa Public Demands Recovery Act (4 of 1914)*
 —*Liability of certificate-debtor to pay interest in proceedings in execution of certificate.*—A certificate signed and filed under section 6 of the Bihar and Orissa Public Demands Recovery Act, 1914, has the effect of a decree passed by the Certificate Officer and is executable as such, subject to the provisions of the Act. In view of section 17(a) of the Act, simple interest at the prescribed rate

is payable on the principal amount of the certificate and is recoverable in the proceedings in execution thereof. The certificate-debtor cannot escape liability to pay the accrued interest by paying the principal amount of the certificate. If any interest has accrued due and is outstanding, the certificate-holder is entitled to realise it by executing the certificate.—*R.B.H.M. JUTE MILLS, KATHIAR, AND OTHERS v. CERTIFICATE OFFICER, KATHIAR, AND OTHERS* [1967] 19 S.T.C. 151 (S.C.).

Recovery of tax payable under Central Sales Tax Act, 1956—Applicability of provisions of State law.—By virtue of section 9(3) of the Central Sales Tax Act, 1956, the provisions of the general sales tax law of the State, including provisions relating to penalties, will be applicable to the entire process of assessment, payment, collection and recovery of the tax payable under the Central Act. Therefore, a dealer under the Central Act who defaults in making payment of tax payable under that Act within the prescribed time becomes liable to pay the penalty provided in section 13(2) of the Mysore Sales Tax Act, 1957, in the same way, in which a defaulting dealer under the Mysore Act incurs that liability. Whatever be the reason for the default in the payment of the tax, whether it be due to dishonesty, stubbornness, or mere whimsicality, once the payment is not made in accordance with section 13(1) the liability under section 13(2) to pay the additional amount (which is designated as penalty) is incurred. This liability to pay the additional amount by way of penalty, being part of the law governing the payment of the tax is, by virtue of section 9(3) of the Central Act, applicable to a dealer under this Act who fails to pay within the prescribed time, irrespective of whether such default is or is not attributable to contumacious conduct. For recovering a certain sum due as tax under the Central Sales Tax Act, 1956, the assessee was sought to be prosecuted under section 29(1)(d) of the Mysore Sales Tax Act, 1957. The Magistrate took the view that the assessee could not be prosecuted under that section and acquitted him but did not consider the prayer in the petition for relief under section 13(3)(b) of the Mysore Act. Subsequently, another petition was filed under section 13(3)(b) for recovery of this tax amount, but the assessee raised the objection that section 403 of the Criminal Procedure Code, 1898, was a bar to the initiation of these proceedings. The Magistrate overruled the objection and ordered the issue of a warrant for the attachment of the assessee's movables. On a revision to the High Court: *Held*, that in the earlier petition the Magistrate did not at all consider the relief which had been

prayed for under section 13(3)(b) of the Mysore Act and when there was no previous order at all in respect of that prayer, it could not be said that in granting the prayer in the second petition, the Magistrate had exercised a power of review. *Amargundappa Arali v. Commissioner of Income-tax, Mysore, Bangalore* [1962] (46 I.T.R. 791) and *Abraham v. Income-tax Officer, Kottayam* [1961] (41 I.T.R. 425) distinguished.—*K. V. ADINARAYANA SETTY v. COMMERCIAL TAX OFFICER, KOLAR CIRCLE, KOLAR* [1963] 14 S.T.C. 587 (Mys.).

Recovery of tax under Central Sales Tax Act, 1956—Validity of assessment—Whether can be questioned.—Section 9(3) of the Central Sales Tax Act, 1956, attracts the application of section 32 of the Mysore Sales Tax Act, 1957, and therefore the validity of an assessment under the Central Act cannot be gone into by the Court when recovery proceedings are initiated under section 13(3)(b) of the Mysore Act. If the appropriate authority, while exercising its jurisdiction and power under the relevant provisions of the Sales Tax Act, holds erroneously that a transaction, which is an outside sale, is not an outside sale and proceeds to levy sales tax on it, it cannot be said that the decision of the appropriate authority is without jurisdiction. The assessee aggrieved by the order of assessment should challenge the validity of the assessment before the authorities constituted under the provisions of the Sales Tax Act. When proceedings are taken under section 13(3)(b) of the Mysore Act, whether a Magistrate is functioning as a civil court or criminal court, the validity of the assessment cannot be questioned by virtue of section 32. Even assuming that the Magistrate functions as a civil court and not as a criminal court and section 32 is not attracted, section 35 would act as a bar and prevent the court from going into the question of validity of the assessment.—*S. KAVALI & SONS v. COMMERCIAL TAX OFFICER, I CIRCLE, HUBLI, AND ANOTHER* [1966] 18 S.T.C. 94 (Mys.).

Recovery as arrears of land revenue—Whether there is lacuna in Madras Act.—Whether there is a sum due to the State Government as arrears of sales tax, this being specifically directed under section 10 of the Madras General Sales Tax Act, 1939, to be recovered as an arrear of land revenue and provision being made in section 52 of the Revenue Recovery Act, 1864, for the recovery of the sum in the same manner as an arrear of land revenue, there is no scope for an argument that there is a lacuna in the machinery of the Act for collection of arrears of sales tax. The general scheme of the Madras General Sales Tax Act, 1939, as well as the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, is to vest the

assessing authority with the right and duty of making the collection of the tax. In these circumstances it is implicit that the assessing authority may apply to the revenue authorities acting under the Madras Revenue Recovery Act, 1864, to exercise their powers to collect the tax payable under the Madras General Sales Tax Act. The fact that there is no specific provision, on the lines of section 46(2) of the Income-tax Act, for enabling the assessing authority to inform the Collector, and secure his services for the recovery of the tax does not invalidate the action of the Collector in recovering the arrears of sales tax as arrear of land revenue.—*P. ABDUL MATHEEN v. THE DEPUTY COMMERCIAL TAX OFFICER, AMBUR, AND ANOTHER* [1957] 8 S.T.C. 825 (Mad.).

—Application under section 24(2)(b), Madras General Sales Tax Act, 1959.—Where the assessing officer filed an application before the District Magistrate for recovering under section 24(2)(b) of the Madras General Sales Tax Act, 1959, the arrears of sales tax due from an assessee, but the District Magistrate returned the application stating that as the assessee had no properties, action could not be taken under section 24(2)(b): *Held*, that the order passed by the District Magistrate without issuing a notice to the assessee under section 24(2)(b) was wrong. It was not open to him to return the application without taking the necessary steps contemplated under section 24(2)(b).—*DEPUTY COMMERCIAL TAX OFFICER, CUDDALORE v. S. GOPALASWAMY CHETTIAR* [1964] 15 S.T.C. 871 (Mad.).

—Notice under section 26(1), Madras General Sales Tax Act, 1959.—The provision in section 26(1) of the Madras General Sales Tax Act, 1959, that a copy of the notice mentioned therein should be forwarded to the assessee at his last address known to the assessing authority is not designed to be a condition precedent to a valid exercise of the power of requisition under the section.—*MASSEYS v. JOINT COMMERCIAL TAX OFFICER, ROYAPURAM, MADRAS-1* [1966] 17 S.T.C. 472 (Mad.).

Recovery proceedings—Necessity to determine liability of person and to give opportunity of hearing before recovery proceedings are started.—A Tehsildar, before whom proceedings for the recovery of tax amount as arrears of land revenue have been initiated in accordance with law, cannot entertain any objection of the person, from whom the amount is sought to be recovered, that he is not liable to pay the amount. But before any such proceedings can be started, there must be a valid authorisation for it, and that consists in an order of the competent authority, namely, the Sales

Tax Officer, holding the person liable for the payment of the amount on some legal basis and finding default in the payment of the amount by the person held so liable. At the stage when the liability of a person for payment of an amount is under determination, the Sales Tax Officer is bound under the provisions of the Central Provinces and Berar Sales Tax Act, 1947, as also under the Madhya Pradesh General Sales Tax Act, 1958, and even on principles of natural justice, to give to the person intended to be made liable an opportunity of hearing and then to pass an order in conformity with law making him liable for, or absolving from, the payment of any amount. Section 23(5) of the Madhya Pradesh General Sales Tax Act, 1958, contemplates hearing of objections of the person from whom tax amount is demanded under section 23(1). Recovery cannot be started just because in the opinion of the Sales Tax Officer there is enough material to support it, without deciding the several questions that would naturally arise for making the person liable for payment of the amount under an assessment.—*MANGALCHAND AND OTHERS v. SALES TAX OFFICER, NARSINGHPUR, AND ANOTHER* [1966] 17 S.T.C. 226 (M.P.).

Modes of recovery under sections 13 and 19, Travancore-Cochin Act.—The mode of recovery contemplated by section 13 of the Travancore-Cochin General Sales Tax Act, 1125, is of general application and that indicated by section 19 of the said Act read with section 386 of the Code of Criminal Procedure, 1898, is one which only applies where there has been a prosecution and a conviction, and the arrears of tax has been specified and a warrant issued by the Magistrate to the Collector. Where there is a specific provision in a statute as well as a general provision, and the case is covered by the specific provision, it is the specific provision which must govern the case and not the general one. Therefore so long as the procedure indicated in section 386(3) of the Code of Criminal Procedure, 1898, is available to the State, it is beyond its competence to commence proceedings under the Travancore-Cochin Revenue Recovery Act, 1951. *Quære*.—Whether, if and when the proceedings indicated in section 386(3) of the Code of Criminal Procedure, 1898, becomes unavailable, it will still be open to the State to invoke the provisions of the Travancore-Cochin Revenue Act, 1951, or not.—*C. M. FRANCIS & CO., PONKUNNAM v. STATE OF KERALA AND OTHERS* [1958] 9 S.T.C. 8 (Ker.). On appeal to Supreme Court, this decision was reversed—See below.

—Both sections 13 and 19 of the Travancore-Cochin General Sales Tax Act, 1125, lay down the mode for recovery of arrears of tax, and lead

to the application of the process for recovery by attachment and sale of movable and immovable properties belonging to the tax-evader. It cannot be said that one proceeding is more general than the other, because there is much that is common between them, in so far as the mode of recovery is concerned. Section 19, in addition to the recovery of the amount, gives the power to the Magistrate to convict and sentence the offender to fine or in default of payment of fine, to imprisonment. Neither of the remedies for recovery is destructive of the other, because if two remedies are open, both can be resorted to at the option of the authorities recovering the amount. Unless the statute in express words or by necessary implication lays down that one remedy is to the exclusion of the other, both the remedies are open to the authorities and they can resort to any one of them at their option. *C. M. Francis & Co., Ponkunnam v. State of Kerala and Others* [1958] (9 S.T.C. 8) reversed. *Shankar Sahai v. Din Dial* [1889] (I.L.R. 12 All. 409) referred to.—*THE STATE OF KERALA AND OTHERS v. C. M. FRANCIS & CO. AND OTHERS* [1961] 12 S.T.C. 119 (S.C.).

Recovery of dues as arrears of land revenue and as fine.—When proceedings for the recovery of an amount due as sales tax under section 13(3)(a) of the Mysore Sales Tax Act, 1957, as if it were an arrear of land revenue, are still pending, an application cannot be made to the Magistrate under section 13(3)(b) for recovery of the amount as if it were a fine imposed by him. The existence of the word “or” is opposed to the stand that resort can be had, simultaneously, to recovery under clauses (a) and (b). Although both the remedies are open, at a time resort can be had to either of them, but not to both at the same time. By virtue of section 32 of the Act a Magistrate has no jurisdiction or competence to decide the validity or otherwise of an assessment made under the Act.—*THE STATE OF MYSORE v. S. S. YALAMALI* [1968] 21 S.T.C. 305 (Mys.).

Proceedings under Revenue Recovery Act—Payments to Proverthicar, whether validly made.—Proceedings under the Travancore-Cochin Revenue Recovery Act, 1951, were initiated against the plaintiff for the recovery of the arrears of sales tax due from him and the plaintiff thereupon made certain payments to the Proverthicar who issued to him a receipt which was not in the prescribed form. Subsequently it was found that some payments made by the plaintiff were not entered in the accounts. The plaintiff thereupon instituted a suit to restrain the State from recovering the same over again: *Held*, (1) that section 4 of the Travancore-Cochin Revenue Recovery Act, 1951, did not

contemplate any particular form of receipt and the direction in the Village Manual to the village officers to issue receipts in the proper form did not mean that payments validly made would not be binding on the State if the receipt for the payment was not issued in the proper form; (2) that the Proverthicar being an officer authorised to receive payments under section 4 the payments were validly made to him and such payments constituted a valid discharge so far as the plaintiff was concerned; (3) that the State could not plead that the payment was not valid so long as it was not alleged or proved that the plaintiff was a party to such fraud.—*MANI POULOSE v. STATE OF TRAVANCORE-COCHIN* [1957] 8 S.T.C. 502 (Ker.).

Proceedings for recovery as arrears of land revenue—Certificate to Collector for realisation of tax as arrears of land revenue—Arrangement with Collector for paying demand in instalments—Whether binding and cannot be varied unilaterally by Collector.—The Sales Tax Officer, who had passed assessment orders against the petitioner for two years, issued to the Collector a recovery certificate for the amount of tax due under the orders for realisation as arrears of land revenue. The petitioner entered into an arrangement with the Collector for paying the demand in monthly instalments and the petitioner was duly paying the instalments. After some time the petitioner received an order from the Collector by which the earlier order was vacated and the petitioner was asked to pay the whole amount with interest before a certain date. The petitioner thereupon filed a petition under Article 226 of the Constitution challenging the validity of the order on the following grounds: (1) The earlier order was solemnly arrived at and was binding and could not be varied unilaterally by the Collector; (2) It was an order under Order XX, rule 11(2), of the Civil Procedure Code, 1908, and therefore could not be set aside at the mere whim of the Court or the decree-holder: *Held*, (1) that the arrangement entered into with the Collector was not a contract; but assuming that it was a contract it would not be binding on the State Government unless it complied with the requirements of Article 299(1) of the Constitution; (2) that Order XX, rule 11, Civil Procedure Code, did not authorise the execution court to pass an order of payment of the decretal amount in instalments. The Collector who passed the order was at best in the position of an execution court and his order could not be treated to be an order under Order XX, rule 11(2), even though the Civil Procedure Code might apply to the recovery proceedings which were being conducted under the

provisions of the U.P. Zamindari Abolition and Land Reforms Act by virtue of section 341 of that Act. Article 299 of the Constitution is mandatory and non-compliance thereof is fatal to a contract. Such a contract is void and totally unenforceable.—*LAKSHMIRATAN COTTON MILLS CO. LTD. v. THE STATE OF UTTAR PRADESH AND OTHERS* [1965] 16 S.T.C. 701 (All.).

Recovery under U.P. Zamindari Abolition and Land Reforms Act—Validity—Recovery by Tahsildar under directions of Collector—Legality.—The provisions of section 8(8) of the U.P. Sales Tax Act, 1948, and rule 50 of the rules framed thereunder make arrears of sales tax recoverable as arrears of land revenue and therefore recovery of arrears of sales tax can be made under the U.P. Zamindari Abolition and Land Reforms Act. All that section 288 of the U.P. Zamindari Abolition and Land Reforms Act means is that even those amounts which became due as arrears of land revenue before the enforcement of that Act can be realised under the provisions of that Act. The provisions of the Revenue Recovery Act, 1890, would not exclude the operation of the U.P. Zamindari Abolition and Land Reforms Act. Where the Sales Tax Officer addressed a letter to the Collector to recover the arrears of sales tax from the appellant as arrears of land revenue, the Tahsildar under the direction of the Collector, could take the necessary proceedings for the recovery of the amount under the provisions of the U.P. Zamindari Abolition and Land Reforms Act. *Padrauna Raj Krishna Sugar Works Ltd. v. Land Reforms Commissioner, U.P., Lucknow, and Others* (1962 A.L.J. 616) referred to.—*UDHAMAL v. SALES TAX OFFICER AND ANOTHER* [1966] 17 S.T.C. 633 (All.).

Adjustment of sums due to contractor towards sales tax dues from contractor.—The Government of Travancore-Cochin adjusted towards the sales tax dues from a contractor a certain sum from the sum payable to the contractor for the supply of bone-meal to the Government. Under a power of attorney executed by the contractor in favour of the petitioner-bank and an agreement between them, which were forwarded to the Government and acknowledged by it, the petitioner was authorised to receive the proceeds of the contractor's bills to Government in consideration of the petitioner financing the contractor for the supply of bone-meal to the Government. The petitioner filed a petition under Article 226 of the Constitution challenging the adjustment made by the Government: *Held*, (1) that although the petitioner had sufficient interest to file the petition, it did not follow that it was

entitled to any relief. This was a matter which should be agitated by an ordinary suit and not in proceedings under Article 226 ; (2) that the State could not be denied the ordinary right of adjustment available to citizens under similar circumstances. The various departments of the Government have no legal personality apart from that of the Government itself.—*THE TRIVANDRUM PERMANENT FUND LTD. v. STATE OF TRAVANCORE-COCHIN AND OTHERS* [1957] 8 S.T.C. 74 (Trav.-Co.).

Claim to set-off sales tax liability against refunds due to—*Right to take recovery proceedings under section 8(8), U.P. Sales Tax Act, 1948.*—There is no provision in the U.P. Sales Tax Act, 1948, or the rules made thereunder entitling a dealer to an adjustment as of right of his tax liability against refunds due to him. It is not possible to say that because an amount is due to a dealer by way of refund in respect of one assessment year he is entitled as of right to have it set-off against the tax assessed on him in respect of another assessment year. The mere circumstance that he has not paid the tax assessed within the period mentioned in the notice of demand is sufficient to classify him as a dealer in default. If therefore an assessee has not paid the tax assessed for an assessment year in accordance with the notice of demand served on him, he is in default and the Sales Tax Officer would be entitled to take proceedings to have the amount due recovered in accordance with section 8(8) of the Act. Section 8(1) does not contemplate a set-off of cross debts. On the contrary, it contemplates actual payment of the amount mentioned in the notice of demand.—*J. K. JUTE MILLS CO. LTD. v. SALES TAX OFFICER, SECTOR II, KANPUR, AND OTHERS* [1967] 19 S.T.C. 339 (All.).

Recovery in a State in respect of claims arising outside State—*Claims arising in Part B States prior to Constitution—Whether can be recovered under Act I of 1890.*—Under entry 43 in the Concurrent List in Schedule VII to the Constitution of India the legislative competence of Parliament is not confined to claims in respect of taxes which arose subsequent to the Constitution of India. That entry authorised Parliament as also the States to legislate in respect of recovery of all claims, whether they accrued before or after the Constitution. The absence of a provision saving the operation of the prior Act in Central Act XXXIII of 1950 which extended the operation of the Central Revenue Recovery Act of 1890 to Part B States is not fatal to the enforcement of claims that arose under the Cochin Revenue Recovery Act which was repealed. *Liladhar Daulatram Multani v. The State* [1951] (D.L.R. 1951 Nag. 76) followed. *Firm Danmal Parshotam Dass v. (Firm)*

Babu Ram-Chhote Lal [1936] (A.I.R. 1936 All. 3) and *Benares Bank Ltd. v. Sri Prakasha Bhagwan Das and Others* [1946] (A.I.R. 1946 All. 269) not followed.—*P. R. KRISHNA RAO v. THE MUNICIPAL SALES TAX OFFICER, ERNAKULAM* [1954] 5 S.T.C. 453 (Trav.-Co.).

—*Assessee in Bombay—Recovery as arrears of land revenue from person in Delhi who owed money to assessee and against whom decree had been passed.*—Under sec. 17 of the Bombay Sales Tax Act, 1952, the Collector can recover the arrears of sales tax due to the Government either from the assessee or any other person who owes money to the assessee. The only condition precedent, however, is that a notice has to be issued to the person concerned. On receipt of the notice that person can file objections before the Collector to the effect that he, in fact, does not owe any money or a part thereof to the assessee. In case his objections prevail with the Collector, no such amount would be demanded from him, otherwise, the said sum would be recovered as arrears of land revenue. Although the assessee was in Bombay and the petitioner who owed money to the assessee was in Delhi, the Collector of Delhi could, under section 3(3) of the Revenue Recovery Act, 1890, on receiving a certificate from the Collector of Bombay, proceed to recover the amount stated therein as if it were arrears of land revenue from the petitioner. Even if the assessee had only a decree passed in his favour against the petitioner, the provisions of the Bombay Sales Tax Act and the Revenue Recovery Act gave ample powers to the Government to recover the amount from the petitioner, without the necessity of going to the executing court.—*SHER SINGH KARTAR SINGH AND ANOTHER v. THE TEHSILDAR (SALES TAX) TIS HAZARI, DELHI, AND OTHERS* [1965] 16 S.T.C. 786 (Pun.).

Recovery—Business within the Presidency town of Calcutta—*Certificate Officer of District 24-Parganas—Whether has jurisdiction to issue certificate.*—The Certificate Officer of the District 24-Parganas, which, for administrative purposes, does not include the Presidency town of Calcutta, has jurisdiction to issue a certificate to recover arrears of sales tax and penalty due from an assessee under the Bengal Finance (Sales Tax) Act, 1941, even if the business in respect of which the sales tax is assessed is being carried on within the limits of the Presidency town of Calcutta and the assets of the certificate-debtor are also situated within that town. *Laduram Taparia v. D.K. Ghosh and Others* [1956] (29 I.T.R. 103; 61 C.W.N. 926) referred to.—*CHANDI CHARAN LAHA v. CERTIFICATE OFFICER, 24-PARGANAS, AND OTHERS* [1967] 19 S.T.C. 526 (Cal.).

Power of Collector to order distraint of movable property in custody of court—Extent of priority of payments regarding arrears of sales tax.

Under section 13(2) of the Hyderabad General Sales Tax Act, 1950, read with sections 116 and 119 of the Hyderabad Land Revenue Act, 1317 F., the Collector has power to make an order of distraint even with regard to movable property in the custody and possession of a court. As there is no material to indicate that the common law doctrine of priority of Crown debts was given judicial recognition in the Hyderabad State before its incorporation into the Indian Republic, apart from the provisions of the Hyderabad Land Revenue Act, there can be no claim to priority of payments in relation to arrears of sales tax under the Hyderabad General Sales Tax Act, 1950. In respect of sales tax, only the procedure for recovery under section 116 of the Hyderabad Land Revenue Act, 1317 F. applies, and not the substantive law of priority under section 104 of the Act. There is nothing in the decision of the Supreme Court in *Superintendent and Remembrancer of Legal Affairs, West Bengal v. Corporation of Calcutta* (A.I.R. 1967 S.C. 997) which affects the authority of the earlier decision of the Supreme Court in *Builders Supply Corporation v. Union of India* [1965] (56 I.T.R. 91).—THE COLLECTOR OF AURANGABAD AND ANOTHER v. THE CENTRAL BANK OF INDIA AND ANOTHER [1968] 21 S.T.C. 10 (S.C.)

Realisation of tax by prosecution.—Where the tax is determined after notice to the assessee, it is not repugnant to rules of natural justice to provide that the validity of assessment shall not be questioned at the stage of realisation of the tax. The provision is analogous to the rule which precludes judgment-debtors from putting forward at the stage of execution of a decree defences that were open to them, in the suit itself. Section 16A of the Madras General Sales Tax Act, 1939, therefore is not opposed to rules of natural justice.—*SYED MOHAMED & Co. v. THE STATE OF MADRAS AND ANOTHER* [1952] 3 S.T.C. 367 at p. 372 (Mad.).

Penalty by way of interest which section 24(3), Madras 1959 Act alone contemplates—Whether can be imposed retrospectively in respect of arrears due under 1939 Act.—Penalty by way of interest on arrears of sales tax, which the Madras General Sales Tax Act, 1959, alone contemplates but not the Madras General Sales Tax Act, 1939, cannot be imposed retrospectively in respect of an arrear of sales tax, which became due before the 1959 Act, and nothing in the transitory provision in section 61 of the 1959 Act will justify such a levy. Levy of penalty by way of interest cannot be treated as a process of recovery of an amount

due. The proper way of looking at the amount is to treat it as a liquidated sum for damages for the period for which the State is kept out of the money to which it is entitled.—*M. A. ABDUL RAHIM AND MOHAMED IBRAHIM AND Co. v. DEPUTY COMMERCIAL TAX OFFICER, GUDIYATHAM* [1965] 16 S.T.C. 290 (Mad.).

—The new provision in section 24(3) of the Madras General Sales Tax Act, 1959, enabling penalty to be levied for delay in payment of the assessed tax does not in terms apply to tax assessed under the Madras General Sales Tax Act, 1939. Section 61 of the 1959 Act will not justify such a levy. *M. A. Abdul Rahim and Mohamed Ibrahim and Co. v. The Deputy Commercial Tax Officer, Gudiyatham* [1965] (16 S.T.C. 290) referred to.—*H. H. NAEEMS & Co. v. THE ADDITIONAL COMMERCIAL TAX OFFICER, V NORTH MADRAS CITY* [1965] 16 S.T.C. 294 (Mad.).

Revenue sale—Attachment of lorry—Claim of financier that he is owner of lorry under hire-purchase agreement—Whether ownership can be determined in writ proceedings.—The respondent, a Special Assistant Commercial Tax Officer, attached a lorry for arrears of sales tax due from an assessee and was proposing to bring it to revenue sale under the provisions of the Revenue Recovery Act. The petitioner thereupon filed a petition under Article 226 of the Constitution for a writ to quash the proceedings of the respondent and contended that he had lent money to the assessee for purchasing the lorry and under the terms of the hire-purchase agreement the lorry belonged to him and not to the assessee: *Held*, that in order to determine whether the owner of the lorry was the petitioner or the assessee, the true nature of the transaction must be ascertained not only by a perusal of the hire-purchase agreement but also by taking into consideration the surrounding circumstances and calling for evidence, and as these could not be done in a writ proceeding, the petitioner should seek his remedy in independent civil proceedings. *Sundaram Finance Ltd. v. State of Kerala* [1966] (17 S.T.C. 489) referred to.—*RATAN CHAND CHORDIA v. THE SPECIAL ASSISTANT COMMERCIAL TAX OFFICER (COLLECTION), SALEM* [1967] 19 S.T.C. 286 (Mad.).

Prosecution for non-payment of tax due by firm.—Where in a prosecution for non-payment of tax due by a firm, all the partners of the firm are made parties to the prosecution proceeding, the prosecution is not vitiated by illegality.—*C. M. FRANCIS v. THE STATE OF KERALA* [1961] 12 S.T.C. 166 (Ker.).

—See also OFFENCES.

ARTIFICIAL SILK

"Artificial silk", meaning of—Exemption of silk—Whether artificial silk is exempted.—Prima facie "artificial" denotes what is not genuine or not real and the ordinary rule of construction is to give the word the meaning generally attached to it. To hold that artificial silk is silk would therefore tantamount to treating the unreal as real. "Silk" when qualified by the word "artificial" indicates something which has its appearance and sheen, just as what is called German silver or chemical diamond in popular parlance signifies the colour and lustre of these and not the contents thereof. It may be that artificial silk is treated as good as silk on grounds of economy by those to whom the softness by touch and glistening on sight are enough irrespective of the contents of the fabric. The fact that it passes off as pure silk sometimes in the market and has sometimes escaped assessment is not a good reason to ignore the difference between the two.—DEPUTY COMMISSIONER OF SALES TAX, BANGALORE *v.* DHARMAPRAKASHA S.V. SREENIVASA SETTY [1954] 5 S.T.C. 180 at p. 181 (Mys.).

Terylene, Terene, Dacron, Nylon, Nylex etc.—Whether artificial silk.—Terylene, Terene, Dacron, Nylon, Nylex etc. would come within the expression "artificial silk" occurring as item 4 in the Third Schedule to the Madras General Sales Tax Act, 1959, and they are therefore exempt from sales tax. As the import and content of the words "Terylene", "Terene", "Dacron", etc., have not been defined in the Sales Tax Acts, courts are bound to have recourse to the meaning attributable to such words by persons who are dealing in such goods and utilising such goods. In other words, the extreme, peculiar and scientific meaning of the goods which might sometimes deviate from the popular meaning, cannot prevail. Ordinarily, courts when called upon to interpret the meaning of such words, mainly rely upon their popular or ordinary meaning. The meaning which the trade, Government officials, and statutes attribute to the words "artificial silk" must be taken to be the ordinary and popular meaning of the same. When a Tribunal has assumed in itself jurisdiction when it has none and is threatening in pursuance of such assumed jurisdiction to do an act which is violative of the vested rights of a citizen, then the courts can and ought to interfere under Article 226 of the Constitution of India and issue a writ of prohibition to interdict the Tribunal from exercising such illegal jurisdiction. Where the assessing authority had made up its mind and had already exercised its jurisdiction, having assimilated the facts

attendant thereto, and had decided to reopen the assessment of the petitioner from 1961 and impose sales tax on Terylene, Terene etc. on the ground that they were not exempt under item 4 of the Third Schedule to the Madras General Sales Tax Act, 1959, and had accordingly issued notices to the petitioner: *Held*, that, in the circumstances of the case, the notices issued by the assessing authority were without jurisdiction and a writ of prohibition could be issued to interdict the authority from exercising such illegal jurisdiction. A jurisdictional fact is one, on the finding of which, the jurisdiction of the concerned Tribunal, depends. But the court's powers to determine the correctness of such facts are still preserved, even though the initial authority has adverted to it, acted upon it and come to the one or the other decision or conclusion. It is a fundamental canon of law that whilst it is possible for both the Centre and the State to interpret upon and explain certain words or expressions used in taxing statutes amongst others, a certain uniformity should prevail in order to avert inconvenience and harassment resulting to the persons affected by such an interpretation or ruling. Article 261 of the Constitution of India is a pointer to this effect and provides that full faith and credit shall be given throughout the territory of India to public acts of the Union and of every State.—KISHINCHAND CHELLARAM AND OTHERS *v.* JOINT COMMERCIAL TAX OFFICER, CHINTADRI PET DIVISION, MADRAS-2, AND OTHERS [1968] 21 S.T.C. 367 (Mad.).

ARTIST

Not a manufacturer.—An artist who makes an etching for a client and provides him with a dozen copies is not a manufacturer of commodities.—*Per* EVATT, J., in DEPUTY FEDERAL COMMISSIONER OF TAXATION (ADAMS) *v.* RAW [1931] 46 Com. L.R. 572.

Advertising agents—Liability to sales tax.—See pages 11-12.

Artist drawing pictures for remuneration—Whether liable to sales tax.—An artist who draws pictures for remuneration does not sell or supply pictures and cannot be assessed to sales tax on the amounts received by him for the drawings. A mere course of business not involving the activities of sale, supply or distribution or a mere sale, supply or distribution without a range of activities constituting a system or course would not each, taken separately, be sufficient to attract the definition of "dealer" in the Madras General Sales Tax Act, 1939. Only a systematic course of conduct on the part of any person evidencing

sales, supply or distribution undertaken in a commercial spirit can lead to the conclusion that the person is a dealer. The Madras General Sales Tax Act cannot be invoked against a person who is not a dealer or in the absence of the taxable event, which is a "sale or purchase" as defined under the Act. An artist who creates a work of art for reward or remuneration has no resemblance to a dealer in works of art. His activities taken as a whole do not constitute a sale.—*V. K. BARASKAR v. STATE OF MADRAS* [1963] 14 S.T.C. 615 (Mad.).

Sculptor—Whether dealer.—It is not any person who sells or buys that becomes a "dealer" as defined in section 2(b) of the Madras General Sales Tax Act, 1939. It is only when a person enters into in a commercial sense as in trade or business that he can properly be described as a dealer within the definition. The transactions should essentially be commercial as suggested by the words, "business of buying, selling, supplying or distributing goods". This requisite of commercial sense of the dealings has been carried also into the concept of "sale" as defined in section 2(h), which makes it even clearer than the definition of dealer, that it is only when the sales or purchases are effected by one in the course of a trade or business that they become sales chargeable to sales tax. The petitioner, a well-known sculptor, artist and painter, made and supplied two bronze casts, one of Mahatma Gandhi, and the other named "Triumph of Labour", to two State Governments at a cost of Rs. 60,000 and Rs. 41,000 respectively. On the question whether the petitioner was liable to sales tax on these transactions: *Held*, on the facts, that the petitioner was not a dealer and that in supplying the two pieces of sculpture he did not effect sales of them in the course of trade or business in such casts and therefore he was not liable to sales tax.—*D. P. ROY CHOWDHURY v. STATE OF MADRAS* [1962] 13 S.T.C. 866 (Mad.).

Commercial artist—Whether dealer.—The assessee, who owned a studio and described himself as a commercial artist, received orders from film producers and distributors and prepared designs for advertisement purposes. Using his skill and energy the assessee produced sketches as per the directions of his customers. After finishing the work, the assessee handed over the papers on which the designs were drawn to his customers, who in their turn got them printed and used them as cinema posters for their business. The assessee had nothing to do with the preparation of the blocks from and out of the designs prepared by him or the printing of the designs. He also painted photos with suitable colours and gave

colouring touches to the slides given to him by his customers: *Held*, that the assessee was only an artist and was not a dealer carrying on the business of selling goods and he was therefore not liable to sales tax under the Madras General Sales Tax Act, 1959.—*T. V. S. SARMA STUDIO v. THE STATE OF MADRAS* [1963] 14 S.T.C. 784 (Mad.).

Photographer—Whether dealer.—See PHOTOGRAPHER *infra*.

ASSAM SALES TAX ACT

Assam Sales Tax Act, whether ultra vires.—The Assam Sales Tax Act (XVII of 1947) is *intra vires* section 297 of the Government of India Act, 1935.—*RAMNIWAS SATYANARAYAN v. COMMISSIONER OF TAXES, ASSAM* [1953] 4 S.T.C. 61.

—The Assam Sales Tax Act is entirely within the competence of the State Legislature and in making non-resident dealers liable to sales tax, the Legislature has not violated any of the articles of the Constitution nor has it affected any of their fundamental rights.—*CEMENT MARKETING CO. OF INDIA LTD. v. STATE OF ASSAM AND OTHERS* [1955] 6 S.T.C. 280.

—Exempted goods sold in containers—Value of containers—When liable to sales tax—Assam Sales Tax Act (17 of 1947).—*COMMISSIONER OF TAXES, ASSAM v. PRABHAT MARKETING CO. LTD.* [1967] 19 S.T.C. 84 (S.C.).

Assam Sales Tax Act (XVII of 1947), Sec. 2(2), (12), (13)—Building contracts—Imposition of sales tax on supply of materials used in building contracts—Legality—Provisions imposing tax—Whether *ultra vires* Legislature—Building contractor—Whether liable to be registered as dealer—Government of India Act, 1935, Sch. VII, List II, entry 48—Constitution of India, 1950, Sch. VII, List II, entry 45.—*M. L. DALMIA AND CO., LTD. v. STATE OF ASSAM AND OTHERS* [1959] 10 S.T.C. 41.

—Sec. 2(3), Sch. III, items 1, 12—Exemption—Supply of rice packed in gunny bags—Rice exempted article—Liability to sales tax on turnover from gunny bags—*Khudhi* (broken rice) and *Bhushi* (rice bran)—Whether exempt from assessment.—*MOHANLAL JOGANI RICE AND ATTA MILLS v. THE STATE OF ASSAM* [1953] 4 S.T.C. 129.

—Sec. 2(3)—Dealer—"Carrying on business", meaning of—Zamindar selling by auction standing timber in zamindari grown spontaneously—Whether zamindar dealer and liable to sales tax—Writs under Constitution—When High Court can issue.—*RAJA BHAIRABENDRA NARAYAN BHUP v. SUPERINTENDENT OF TAXES, DHUBRI, AND OTHERS* [1958] 9 S.T.C. 60.

—Sec. 2(3), (12)—Dealer—Non-resident selling goods inside State—Whether dealer—Delivery of goods inside State for consumption therein by person having no fixed place of business inside State—Liability to sales tax—Constitution of India, Article 286(1)(a), Explanation.—CEMENT MARKETING CO. OF INDIA LTD. *v.* STATE OF ASSAM AND OTHERS [1955] 6 S.T.C. 280.

—Secs. 2(12), 3(1A)—Sales outside State—Inter-State sales—Scope of Art. 286(1)(a), Explanation, and Art. 286(2)—Delivery of goods at railway stations within Assam State for despatch outside State—Right of Assam State to tax such sales—Delivery to carrier—Whether actual delivery—Whether delivery for purpose of consumption in States to which goods were despatched—Whether sales exempt under Art. 286—Effect of Sales Tax Laws Validation Act, 1956—Constitution of India, Art. 286(1)(a), Explanation, Art. 286(2).—BIRENDRA NATH GUHA *v.* COMMISSIONER OF TAXES, ASSAM [1959] 10 S.T.C. 327.

—Secs. 2(12), 17(4)—Place of sale—Despatches of goods from Assam to Calcutta on board river steamer—Consignments to buyers as consignees—Contracts of sale made in Calcutta prior to dates of despatch—Free delivery at buyer's godown—90 per cent. of price to be paid against delivery of documents and 10 per cent. after inspection and delivery—Where sales take place—Imposition of sales tax under section 17(4) for failure to submit return—Legality—Act, whether *ultra vires* sec. 297, Government of India Act, 1935—Sale of Goods Act, 1930, Secs. 19(2), 23(1) and (2), 25(1) and (2)—Government of India Act, 1935, Sec. 297.—RAMNIWAS SATYANARAYAN AND OTHERS *v.* COMMISSIONER OF TAXES, ASSAM [1953] 4 S.T.C. 61.

—Secs. 2(12), 32(3)—Despatches of goods to party outside State as consignees—Delivery to carrier—Payment of consideration deferred—No reservation of right of disposal—Liability to tax—Reference—Nature of jurisdiction of High Court.—SAGARMAL SAWARMAL *v.* THE STATE OF ASSAM [1953] 4 S.T.C. 264.

—Secs. 2(12), 19, 32(8), 34—Reference—Re-assessment—High Court answering question that certain sales are not taxable under section 2(12) but leaving open question regarding their taxability under Explanation to section 2(12)—Commissioner directing Superintendent to dispose of case in accordance with judgment—Power of Superintendent to reopen assessment—Limitation—Nature of jurisdiction of High Court.—NATHMAL TOLARAM *v.* SUPERINTENDENT OF TAXES, DHUBRI, AND ANOTHER [1961] 12 S.T.C. 9 (S.C.).

—Secs. 2(12), 32—Sales outside State—Inter-State sales—Goods inside State—Contract of sale

and payment of price outside State—Goods delivered outside State for consumption therein—Where sale takes place—Power to tax such sale—Sales to registered dealer—Whether goods are mentioned in certificate of registration of dealer—Question of fact—Effect of decision in *Ramesh Chandra Dey's* case—Necessity to produce declaration in writing as mentioned in rule 80.—SURMA MATCH AND INDUSTRIES (PRIVATE) LTD. *v.* COMMISSIONER OF TAXES, ASSAM [1960] 11 S.T.C. 381.

—Sec. 2(12), second proviso—"Sale", meaning of—Provision in Act treating as sale user by dealer from his stock—Whether *ultra vires* Legislature—Scope of entry 54, List II, Schedule VII, Constitution of India—"Any goods liable to tax under the Act", meaning of—Maintainability of application under Article 226—Existence of alternative remedy—Effect—Government of India Act, 1935, Schedule VII, List II, entry 48.—BEHUBAR CO., LTD. *v.* COMMISSIONER OF TAXES, ASSAM, AND OTHERS [1957] 8 S.T.C. 417.

—Explanation to sec. 2(12).—THANSINGH NATHMAL *v.* SUPERINTENDENT OF TAXES [1964] 15 S.T.C. 468 (S.C.).

—Secs. 3, 7, 31 and 32, Sch. III, item 1—Exemption—"All cereals and pulses including all forms of rice"—*Chira* and *muri*—Whether cereals and exempt from taxation—Interpretation of taxing statutes—Exemption clause—Commissioner—Power under section 31—Failure to exercise under misapprehension of law—Remedy under Sales Tax Act becoming time-barred—Maintainability of application under Article 226 of Constitution—Constitution of India, Art. 226.—KAPILDEORAM BAIJNATH PROSAD *v.* J. K. DAS AND OTHERS [1954] 5 S.T.C. 365.

—Sec. 3, Sch. III, item 17—Power of State Government to levy sales tax on tobacco—Exemption of hooka tobacco—Whether applies to tobacco sold as tobacco leaf—Constitution of India, 1950—Government of India Act, 1935.—RAMANANDA JOY KISSEN *v.* COMMISSIONER OF TAXES (SALES), ASSAM [1951] 2 S.T.C. 11.

—Secs. 3, 15(1)(b)—Sales outside State—Inter-State sales—Registered dealer—Provisions compelling dealer to give declaration that goods are intended for resale inside State to entitle him to purchase goods free of sales tax—Validity—Amendment to section 15 and rule 80—Whether contravene Article 286(2) and *ultra vires* Legislature—Purchases inside State for purposes of resale outside State—Whether entitled to exemption under Article 286(2)—Assam Sales Tax Rules, 1950, Rule 80—Constitution of India, Article 286.

—**RAMESH CHANDRA DEY v. THE STATE OF ASSAM AND OTHERS** [1957] 8 S.T.C. 384 reversed on appeal to Supreme Court see below.

—Secs. 3, 15—Inter-State sales—Registered dealer—Purchases inside State for resale outside State—Whether exempt under Article 286(2)—Provisions compelling dealer to give declaration that goods are intended for resale inside State to entitle him to purchase goods free of sales tax—Validity—Whether contravene Article 286(2) and *ultra vires* Legislature.—**THE STATE OF ASSAM v. RAMESH CHANDRA DEY AND OTHERS** [1961] 12 S.T.C. 441 (S.C.).

—Secs. 3, 29, 52(2)(i)—Legislative power—Section 29 conferring power on Commissioner to assess dealers not ordinarily liable to tax and selling goods obtained from outside State—Validity—Whether discriminatory and *ultra vires* Legislature—Scope of section 29 and rule 78—Validity of section 52(2)(i) and rule 74—Application for revision to Commissioner against order of remand—Proper fee payable—Power of Sales Tax Authorities and Board to decide question relating to validity of provision in Act—**Assam Sales Tax Rules, 1947, Rules 74, 78—Constitution of India, 1950, Articles 14, 304(a)—Government of India Act, 1935, Sec. 297.—BHARAT AUTOMOBILES, GAUHATI v. STATE OF ASSAM** [1957] 8 S.T.C. 537.

—Sec. 15(1)(b)(i)(b)—Discriminatory Legislation—Sales to registered dealer—Deduction—Amendment deleting section 15(1)(b)(i)(b)—Whether violates Article 14 or 19(1)(g), Constitution.—**STEELSWORTH LIMITED v. THE STATE OF ASSAM AND ANOTHER** [1962] 13 S.T.C. 233 (S.C.).

—Secs. 30, 31(1)—Commissioner—Revision—Power to enhance assessment—“Subject to the provisions of this Act”, meaning of.—**RAWATMAL MULCHAND v. COMMISSIONER OF TAXES** [1951] 2 S.T.C. 194.

—Secs. 30, 52(1)—Appeals—Fee on memoranda of appeals—Power of Government to frame rules—Rule 74 fixing fee on memoranda of appeals—Validity—Whether excessive delegation of legislative powers and *ultra vires* Government—Fee prescribed under rule 74—Whether tax—Amendment of Court-fees Act providing fixed fee on memoranda of appeals under Sales Tax Act—Effect—Whether rule 74 is repealed—Assistant Commissioner of Taxes—Whether competent to hear appeals.—**BAJRANGLAL NANDALAL v. COMMISSIONER OF TAXES, ASSAM** [1960] 11 S.T.C. 125.

—Secs. 30(4), 32(4), (5), (6)—Application for reference—Rejection by Commissioner as incompetent—Summary dismissal of time-barred appeal by Assistant Commissioner but opinion

expressed on merits—Whether disposal of appeal within section 30(4)—Competency of reference.—**RADHA KISHAN DINDAYAL v. COMMISSIONER OF TAXES, ASSAM** [1951] 2 S.T.C. 4.

—Secs. 31(1), (2), 32(2), (5), (6), 47—Reference—Application for reference—“Order prejudicial to assessee”, meaning of—Order rejecting application for revision and appellate order modifying assessment in favour of dealer—Rejection of application for reference under section 32(2)—Application to High Court under section 35(5) and (6)—Maintainability—Constitution of India, 1950, Article 227.—**ONKARMAL JWALAPROSAD AND OTHERS v. COMMISSIONER OF TAXES, ASSAM** [1954] 5 S.T.C. 60.

—Sec. 32(2)—Application for reference—Starting point of limitation—Whether date of service of order.—**RAHMAN STORES v. COMMISSIONER OF TAXES** [1953] 4 S.T.C. 336.

—Schedule III, items 1, 4—Exemption—“Bread”, “cereals”, meaning of—*Nimkis* and *singaras*—Whether bread or cereals and exempt from sales tax—Sweets prepared from milk, flour and sugar—Whether exempt.—**DELHI MISTANNA BHANDAR v. STATE OF ASSAM** [1957] 8 S.T.C. 258.

—Schedule III, item 16—Exemption—Handwoven and handspun cotton cloths from mill-made yarn—Interpretation of item 16 in Sch. III.—**RAM NARAYAN NANDALAL v. THE STATE OF ASSAM** [1953] 4 S.T.C. 195.

—Writs under Constitution—Petition under Article 226 challenging validity of assessment after it has become final—Maintainability—Constitution of India, Article 226.—**SISIR KUMAR DAS PURKAYASTHA v. STATE OF ASSAM AND OTHERS** [1957] 8 S.T.C. 416.

ASSEMBLY DEBATES

Whether can be referred to.—See CONSTRUCTION OF STATUTES.

ASSESSMENT

Assessment—Liability to pay and jurisdiction to assess—Failure to issue notice under section 13(2)(a)—Validity of assessment.—Section 13 of the Bihar Sales Tax Act, 1947, imposes no charge on the subject and it is merely a part of the machinery of assessment. The liability to pay sales tax is founded upon sections 4 and 5 which are the charging sections. The jurisdiction to assess and the liability to pay tax do not depend on the issue or non-issue of the notice under section 13. The Sales Tax Officer paid a surprise visit to the shop of the assessee on 1st July, 1948, and discovered that sales to the extent of Rs. 1,349 were not accounted for. The sales were entered in the

kacha rokar but not in the pucca rokar maintained by the assessee. On 20th June, 1948, the assessee filed his return for the quarter ending 30th July, 1948, declaring a taxable turnover of Rs. 89,000 but the Sales Tax Officer on 3rd September, 1948, assessed the assessee on a taxable turnover of Rs. 5 lakhs. The assessee contended that the assessment was invalid since no notice under section 13(2)(a) had been issued: *Held*, (1) that the Sales Tax Officer had jurisdiction to make the assessment, notwithstanding the fact that no notice under section 13(2)(a) had been issued; (2) that since there was no material on the record to show that the assessee had opportunity of producing account books and other papers for the period in question the failure to issue the notice had, in the circumstances of the case, caused prejudice to the assessee and the assessment made by the Sales Tax Officer was invalid; (3) that the case should recommence from the stage when the Sales Tax Officer should issue notice under section 13(2)(a) on the basis of the returns which had already been furnished. *Chaituram v. Commissioner of Income-tax, Bihar* [1947] (15 I.T.R. 302) and *Jitan Ram v. Commissioner of Income-tax* [1951] (19 I.T.R. 476) applied. —*HARMUKH RAI JAIRAM DAS v. THE STATE* [1952] 3 S.T.C. 153 (Pat.).

Liability to pay tax—Whether depends on actual assessment—Effect of repeal of Act followed by fresh legislation—How far old rights and liabilities are affected—Principles applicable stated—Validity of assessment made under Cochin Act after repeal of that Act by Travancore-Cochin Act.—The charge or liability to pay sales tax is made in consequence of the Act upon the subject and the assessment is only for the purpose of quantifying it. Under the provisions of the Cochin Sales Tax Act, 1121, the liability is imposed by the charging section (section 4) and the provisions as to assessment are only machinery provisions by which the liability is sought to be quantified. Whenever there is a repeal of an enactment, the consequences laid down in section 4 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal, there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject, the provisions of the new Act have to be looked into for the purpose of determining whether they indicate a different intention. The line of enquiry would be not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. Where the assessee was assessed to sales tax for the period 1—1—1125 to 15—10—1125 under the Cochin Sales Tax Act, 1121, after the

repeal of that Act by the Travancore-Cochin General Sales Tax Act, 1125, but the assessee disputed his liability to pay the tax on the ground that the assessment was illegal inasmuch as the assessment was made under an Act when it was not in force: *Held*, that under the Cochin Act there was already a liability which had not been destroyed by the Travancore-Cochin Act and that the principles enunciated in section 4 of the General Clauses Act applied and therefore the liability of the assessee could be enforced by the Sales Tax Department notwithstanding the repeal of the Cochin Act. *Chakoo Bhai Ghelabhai v. State of Orissa* [1956] (7 S.T.C. 36) dissented from. *Doorga Prosad v. Secretary of State* [1945] (13 I.T.R. 285) distinguished.—*M. ABRAMAI v. COMMISSIONER OF SALES TAX, KERALA STATE, AND OTHERS* [1958] 9 S.T.C. 780 (Ker.).

—The liability to sales tax is created by the charging sections and the assessment order only quantifies that liability.—*TATA IRON AND STEEL CO., LTD. v. STATE OF BIHAR* [1956] 7 S.T.C. 158 (Pat.).

—It is a mistake to suppose that the jurisdiction of the Sales Tax Officer to make assessment depends upon the issue of a notice. The issue or receipt of a notice is not the foundation of the jurisdiction of the Sales Tax Officer to make assessment or of the liability of the assessee to pay the sales tax. The liability to pay the tax is founded upon section 4 of the Bihar Sales Tax Act, which is the charging section. Section 13 only provides a machinery for the determination of the amount of the tax and any irregularity in the issue of the notice would not affect the legal validity of the assessment.—*THE STATE OF BIHAR v. S. S. MUKHERJEE* [1954] 5 S.T.C. 377 (Pat.).

—It could not be said that because of section 6(c) of the General Clauses Act, the liability of a dealer to taxation under the proviso to section 2(g) of the Orissa Sales Tax Act, 1947, continued in spite of the omission of that proviso by the Adaptation of Laws Order, 1950. Section 6 of the General Clauses Act would not apply to the case inasmuch as the Adaptation Order itself has made a provision similar to section 6 in clause 20 which alone should be applied to the case. A liability can only be said to be “already incurred” within the meaning of clause 20 if that liability has been ascertained and an assessment has been made under the provisions of the Sales Tax Act.—*CHAKOO BHAI GHELABHAI v. THE STATE OF ORISSA AND OTHERS* [1956] 7 S.T.C. 36 (Ori.). (Reversed by Supreme Court [1960] 11 S.T.C. 716).

—See also *M. ABRAMAI v. COMMISSIONER OF SALES TAX, KERALA STATE* [1958] 9 S.T.C. 780 (Ker.).

—Under both the Income-tax Act and the Bengal Finance (Sales Tax) Act, 1941, the liability to pay the relevant tax accrues before an assessment is made—under the Bengal Act and in the case of a registered dealer, as soon as a taxable sale is made and under the Indian Act, as soon as a person's income reaches the taxable limit. CHAKRAVARTTI, C.J., in *Recols India Ltd., In re* [1953] (4 S.T.C. 271). [The law on the point was stated before the House of Lords by LORD DUNEDIN in *Whitney v. Commissioners of Inland Revenue* ([1926] 10 Tax Cas. 88) in these words:—"Now, there are three stages in the imposition of a tax. There is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next there is the assessment. Liability does not depend on assessment, that *ex hypothesi* has already been fixed. But assessment particularises the exact sum which a person liable has to pay. Lastly come the methods of recovery if the person taxed does not voluntarily pay." This statement of the law has been approved and recognised in several subsequent cases as laying down the true principle with regard to liability to pay income-tax. The same principle should be applied to sales tax also—Ed.].

Liability to pay tax and jurisdiction to assess—Whether depend on validity of notices.—Section 11 read with rule 49 is not the charging provision in the Bengal Finance (Sales Tax) Act, 1941, but merely lays down the procedure of assessment. Assessment of sales tax made without service of notice in Form VI or on the basis of irregular or incomplete notice may be at best an irregularity but does not touch the jurisdiction to assess. If as the result of an irregularity an assessee is prejudiced, the assessment may be set aside on the ground of irregularity prejudicing the assessee, but an assessment does not become a void assessment because of invalidity or irregularity or absence of notice. Where the action of the assessee-firm implied that they intended to be heard in support of their returns and were asking for an opportunity to make their submissions by production of documentary evidence in support of their returns: *Held*, that this conduct was sufficient to indicate that the assessee had substantially waived the irregularity in the notice with which the proceedings had started. When an authority passes an order which is within its competence, it cannot fail merely because it purports to be made under a wrong provision, if it can be shown to be within its powers under any other rule. The validity of an order should be judged on consideration of its substance and not its form.—MADANLAL MAHAWAR AND OTHERS

v. COMMERCIAL TAX OFFICER, CENTRAL SECTION, WEST BENGAL, AND OTHERS [1965] 16 S.T.C. 1071 (Cal.).

Assessment based on voluntary returns submitted more than three years after close of accounting year.—Under the Hyderabad General Sales Tax Act, 1950, and the rules framed thereunder, it is open to the department to accept a return submitted by an assessee as the basis of assessment even after the expiry of the period prescribed by the statutory rules. There is no legal bar to complete the assessment on the return so made. Though the assessee could not claim as of right to have the delay condoned in the submission of the return, it was competent for the taxing authority to excuse the delay in the exercise of its discretion and make the assessment on the basis of it. There can, therefore, be no obstacle in the way of the department making an assessment on the basis of the return, voluntarily submitted more than 3 years of the close of the relevant accounting year.—STATE OF A. P. *v. DONTALA RAJAIAH* [1960] 11 S.T.C. 819 (A.P.).

Assessment on the basis of voluntary return submitted after expiry of prescribed period—Imposition of penalty—Legality.—See STATE OF ANDHRA PRADESH *v. PYARELAL MALHOTRA* [1962] 13 S.T.C. 946 (A.P.) under PENALTY.

Duty of officers in making assessments.—Before making final assessments Sales Tax Officers should give sufficient opportunity to assessee to lead evidence to prove whether they are or are not dealers. The results of any private enquiries made by the officers should be put to the assessee and they should be given an opportunity to meet the same. It will be open to the officers to take into account admissions made by assessee in their statements or return forms or otherwise that they have authority to sell goods on behalf of their principals. If the assessee rely on printed forms to show that they are in no way concerned with the transaction of sale, the officers should carefully scrutinise the genuineness of these forms and record a finding whether the forms are genuine or have not merely been got manufactured for purposes of escaping liability. The functions which the Sales Tax Officers discharge in making assessments are judicial functions which must be faithfully and conscientiously discharged in respect of each assessee and not on any general instructions of their departmental officers or according to any set pattern or any pre-determined formula. Directions to draw counter-affidavits given.—TARACHAND KALLOO RAM *v. SALES TAX OFFICER* [1962] 13 S.T.C. 957 (All.).

—*Exempted turnover included in return and assessed to tax—Duty of authorities to correct the*

mistake.—The duty of the assessing officers is not merely to impose tax that is lawfully exigible but also to give to the assessee the benefit of any reduction or exemption that may become due to them upon facts actually found to be true by the assessing authorities, whether or not the assessee, out of ignorance or by mistake, make a claim thereto. When the mistake is obvious and the matter is taken up on appeal, it is the duty of the appellate authorities to correct the mistake.—*GIRIDHARIAL PARASMAL v. THE STATE OF MYSORE* [1967] 20 S.T.C. 64 (Mys.).

Initiation of assessment proceedings—Preliminary objection that proceedings are barred by limitation—Duty of officer to decide objection judicially and record proper order.—Where an assessee objected to the initiation of assessment proceedings on the ground that they were barred by limitation, it was incumbent on the Sales Tax Officer to decide the objection judicially and record a proper order embodying his decision and reasons therefor. An order of the officer merely stating that it was explained to the assessee that his case was not barred by limitation could not in any sense be regarded as an order containing a judicial decision of the officer on the objection raised by the assessee. The order at the most indicated that the officer was inclined to hold that the proceedings commenced against the assessee were within time; but the statement of a mere inclination on the part of the officer was not sufficient for disposal of the preliminary objection raised by the assessee.—*ORISSA HIDES TRADING COMPANY v. SALES TAX OFFICER, RAIPUR* [1964] 15 S.T.C. 36 (M.P.).

Assessment order passed without hearing assessee—Petition under Article 226 for quashing order—Maintainability.—An assessment order passed against an assessee without an opportunity being given to him to attend the hearing is void on the ground of denial of natural justice and can be quashed by the High Court by the issue of a writ of *certiorari* in spite of the fact that other remedies are available.—*SREE SAIBABA AND CO. v. COMMERCIAL TAX OFFICER, CIRCLE III, HYDERABAD* [1960] 11 S.T.C. 804 (A.P.).

Assessment becoming final—Subsequent judicial interpretation that the law conferred no power to make the levy—Amount payable under assessment—Whether department entitled to collect.—The Constitution does not guarantee that the persons employed to administer the law will not make mistakes when exercising the powers conferred on them. If they make mistakes in the exercise of their powers, the persons affected must

ordinarily use the remedies of appeal, reference or revision, as the case may be. But where there is an absence of jurisdiction the situation is materially altered. And, it would not make any difference whether the absence of jurisdiction arises out of an attempt to usurp jurisdiction, or because the officer has through ignorance or otherwise strayed beyond the limits of his jurisdiction. In relation to a tax, where an assessing officer acts outside the boundaries of his jurisdiction his acts would to that extent be null and void. No one would have any power to call upon a citizen to make payment of a tax so imposed, and, if any authority seeks to collect a tax so imposed the citizen can call in aid Article 265 and seek the assistance of the High Court. The petitioners were assessed to sales tax and the officers making the assessments *bona fide* believed that the assessments were in accordance with law. Subsequently it was established by judicial decisions that the law conferred upon the officers no power to make the levy. The assessments made on the petitioners, however, became final, because one of the petitioners did not appeal against the assessment and had paid a portion of the assessed tax and the appeal preferred by the other petitioner was dismissed as time-barred. The department demanded payment of the tax from the petitioner on the ground that once the assessments had become final, the amounts charged thereunder remained payable and the State was entitled to collect it. The petitioners filed petitions under Article 226 of the Constitution for a writ prohibiting the officers from recovering the amounts from the petitioners: *Held*, that a writ of *mandamus* should issue directing the officers to forbear from collecting the amounts from the petitioners.—*RAYALASEEMA CONSTRUCTIONS AND ANOTHER v. DEPUTY COMMERCIAL TAX OFFICER, MANNADY DIVISION, MADRAS-1, AND OTHERS* [1959] 10 S.T.C. 345 (Mad.) affirmed by the Supreme Court in [1966] 17 S.T.C. 505.

Assessment—When becomes final.—An assessment cannot be said to have become final, the moment it is made, but it becomes final only after the period prescribed for the filing of appeal or revision or for making an additional assessment has expired.—*IMMIDISETTI RAMAKRISHNAIAH v. STATE OF ANDHRA PRADESH* [1962] 13 S.T.C. 914 (A.P.).

Finality of assessment—Whether conclusive of legality.—The finality of an assessment under the terms of a taxing statute is not always or necessarily conclusive of the legality of the assessment. An assessment made without

jurisdiction or in pursuance of a provision which is found to be *ultra vires* continue to be unlawful, and nothing less than a validating provision properly enacted would alter that fact.—*RAYALASEEMA CONSTRUCTIONS v. DEPUTY COMMERCIAL TAX OFFICER* [1959] 10 S.T.C. 345 (Mad.) affirmed by the Supreme Court in [1966] 17 S.T.C. 505.

Assessment becoming final—Application for refund—Whether maintainable.—Section 13 of the C.P. and Berar Sales Tax Act, 1947 (prior to its amendment by Act 23 of 1953) implies that refund may be granted only of the amount which is not lawfully due; and whether a certain amount is lawfully due or not must be determined by the officer in making the order of assessment or reassessment. Until the order of assessment is set aside by appropriate proceeding under the Act full effect must be given to the order even if it be later found that the order was erroneous in law. Therefore an application for refund of sales tax paid under an order of assessment made by the Assistant Commissioner of Sales Tax could not be entertained by that officer on the plea that the order was made on an erroneous view of the law unless the order was set aside in appropriate proceedings by way of appeal or revision. Where the assessee paid the amount of tax assessed on him by the Assistant Commissioner of Sales Tax on his turnover from his business in yarn for the period November 13, 1947, to November 1, 1948, and then applied to that officer under section 13 for an order refunding an amount on the plea that in the turnover were included dyeing charges which were not taxable: *Held*, that the application was not maintainable under section 13 (as originally passed). Under the C.P. and Berar Sales Tax Act, the Assistant Commissioner who exercised the powers of the Commissioner has no power to review his decision, nor is he authorised to ignore his previous order and to pass an order for refund inconsistent with his previous order which has not been set aside by appropriate proceedings. Decision of the Madhya Pradesh High Court reversed. *State of Bombay v. Purshottamdas Dwarakadas Patel* [1957] (8 S.T.C. 379) approved. *Sheikh Gauhar Sheikh Nazir of Balaghat v. The State* [1952] (3 S.T.C. 331) overruled. *Commissioner of Income-tax v. Tribune Trust* [1948] (16 I.T.R. 214; A.I.R. 1948 P.C. 102; L.R. 74 I.A. 306) referred to.—*THE STATE OF MADHYA PRADESH (NOW MAHARASHTRA) v. HAJI HASAN DADA* [1966] 17 S.T.C. 343 (S.C.).

Assessment and mode of realisation.—There is an essential distinction between an assessment and the mode of realisation. Under the Madras

General Sales Tax Act, 1939, a firm is a “dealer” and therefore in respect of a transaction done by a firm, which was in existence during the assessment year but was dissolved subsequently, it is the firm that is to be assessed to tax and not any of its partners in their individual capacity.—*DEPUTY COMMISSIONER OF COMMERCIAL TAXES, GUNTUR DIVISION v. K. BAKTHAVATSALAM NAIDU* [1955] 6 S.T.C. 657 (Andh.).

Assessment order—Whether decree.—The order of the Deputy Commercial Tax Officer assessing a person to sales tax could not be treated as a decree for the purposes of the Court-fees Act.—*KALLA SURAYYA AND SONS v. PROVINCE OF MADRAS* [1949] 1 S.T.C. 214 (Mad.).

Composite assessments for two periods—Assessment for one period held to be illegal—Whether entire assessment should be set aside.—When an assessment consists of a single undivided sum in respect of the totality of the property treated as assessable, the wrongful inclusion in it of certain items of property which by virtue of a provision of law were expressly exempted from taxation renders the assessment invalid in toto. An assessment relating to the pre-Constitution as well as the post-Constitution periods was one composite whole. The Court found that the assessment relating to the post-Constitution period was invalid by virtue of Article 286(1)(a) and the explanation thereto: *Held*, that the assessment was invalid in toto and should be set aside. [The case was, however, remitted to the assessing officer for reassessment in accordance with law.].—*RAM NARAIN SONS LTD. v. ASSISTANT COMMISSIONER OF SALES TAX AND OTHERS* [1955] 6 S.T.C. 627 (S.C.).

Composite assessment—Splitting up—Whether permissible.—*THE STATE OF JAMMU AND KASHMIR AND OTHERS v. CALTEX (INDIA) LTD.* [1966] 17 S.T.C. 612 (S.C.).

—Inclusion in assessable income of non-taxable items.—Where an assessment consists of a single undivided sum in respect of the totality of the property treated as assessable, the wrongful inclusion in it of certain items which by virtue of a provision of law were expressly exempted from taxation renders the assessment invalid in toto.—*INDIRA BAI AND ANOTHER v. THE STATE OF MADRAS* [1958] 9 S.T.C. 80 (A.P.).

—Inclusion in assessment of certain non-taxable items—Whether whole assessment invalid.—See *PROVINCIAL GOVERNMENT OF MADRAS (NOW ANDHRA PRADESH) v. J. S. BASAPPA* [1964] 15 S.T.C. 144 (S.C.).

Due and assessed.—The expressions “due” and “assessed” do not connote the same meaning.

—THIMMINA KATTE KOTRAPPA *v.* ASSISTANT SALES TAX OFFICER [1951] 2 S.T.C. 35 (Mys.).

Due and payable, meanings of.—See RECOLS (INDIA) LTD., *In re* [1953] 4 S.T.C. 271 (Cal.) page 68 *supra*.

Due and payable—Meanings of.—*Composition fee in lieu of sales tax—Whether application for composition can be made after completion of assessment.*—See M. A. & Co. *v.* ASSISTANT COMMISSIONER OF SALES TAX [1964] 15 S.T.C. 487 (All.) under SALES TAX.

Error in making assessment.—A writ of *certiorari* will issue when the decision of an inferior court or tribunal is erroneous in law, and the error is apparent on the face of the record. Where an order was passed by the Sales Tax Officer purporting to have been under section 7(2) of the U.P. Sales Tax Act, 1948, but the order was clearly an order under section 7(3) inasmuch as he was not satisfied as to the correctness of the return submitted by the petitioner: *Held*, that it was only a clerical error and not an error of law. *Held further*, on the facts and circumstances of the case, that the assessment order was passed by the Sales Tax Officer under section 7(3) without having given an opportunity of being heard to the petitioner. [A writ of *certiorari* was accordingly issued quashing the order of the Sales Tax Officer and he was directed to make the assessment afresh in accordance with the provisions of the law.]. *Hari Vishnu v. Ahmad Ishaq* [1955] (A.I.R. 1955 S.C. 233) referred to.—BRIJ LAL SURI *v.* THE SALES TAX OFFICER [1955] 6 S.T.C. 250 (All.).

Irregularity in issuing notices—*Notice in Form 13, Bombay Act—Assessee's objection that notice is defective accepted by officer and assessment made under section 14(2), disallowing certain exemptions—Legality.*—The assessee furnished a return of turnover under the Bombay Sales Tax Act, 1953, and the assessing authority issued a notice in Form No. 13 prescribed under section 14 of the Act. The assessee appeared in response to the notice and raised the objection that the notice was defective as he was not given 10 days' time as required by the Rules. The officer agreed that the notice was defective, and made the assessment under section 14(2) after disallowing certain exemptions claimed by the assessee. The assessee contended that once the officer came to act under section 14(2), he had no jurisdiction to do anything but to accept as correct and complete the return furnished by the assessee: *Held*, (1) that it was not possible for the assessing authority to act under section 14(2) inasmuch as the issue of the notice showed that the assessment could not be completed without hearing the assessee's

explanation of his return and/or without production of further evidence by him in support of the return; (2) that even assuming that the notice was originally defective, any defect therein became totally inoperative when the assessee on the service of the notice appeared before him; (3) that the orders of the assessing authority and appellate authorities should be set aside and the assessing authority should complete the assessment after giving the assessee opportunity of producing evidence and being heard; (4) that the setting aside of the order revived the return and so long as the return was there, no question of limitation arose.—MULANMAL HAKKAL v. STATE OF MYSORE [1968] 21 S.T.C. 485 (Mys.).

Jurisdiction to assess.—Rule 78 of the Assam Sales Tax Rules, 1947, provided that when a dealer has more than one place of business, he should be assessed by the Superintendent within whose jurisdiction his head office or his chief place of business was situated: *Held*, that the object of rule 78 is to avoid multiplicity of assessment proceedings and consequent anomalies that may arise with reference to the same dealer. It is directory and not mandatory and was framed for the convenience of both the taxing officer and dealers. The rule does not completely take away the jurisdiction under the law of those Superintendents within whose jurisdiction the dealer has his place or places of business.—BHARAT AUTOMOBILES, GAUHATI *v.* THE STATE OF ASSAM [1957] 8 S.T.C. 537 (Assam).

Legality of assessment based on account books seized illegally.—M. K. ANNAMALAI CHETTIAR AND CO. *v.* THE DEPUTY COMMERCIAL TAX OFFICER, PERUNDUARI, AND ANOTHER [1965] 16 S.T.C. 687 (Mad.).—See page 5 *supra*.

Licence—Power to issue licence and power to levy tax—Whether same.—The power to issue a licence is different from the power to levy a tax. The coincidence of both the powers in the same officer or the simultaneity of their exercise does not create a coalescence of the two or constitute the grant or refusal of a licence a part of the process of assessment to sales tax.—C. D. GOVINDA RAO *v.* FIRST MEMBER, BOARD OF REVENUE, AND ANOTHER [1954] 5 S.T.C. 121 (Trav.-Co.).

Limitation—Limitation for assessment of escaped turnover or making original assessment.—See LIMITATION.

—*Appellate authority setting aside assessment and directing fresh assessment—Limitation.*—See LIMITATION.

—*Notice issued under section 11(1), Pepsu Ordinance—Repeal of Ordinance, and Punjab Act brought*

into force before expiry of period of limitation—Applicability of sub-sections (3) and (4) of section 11, Punjab Act—Whether assessment barred by limitation.

—On 10th March, 1959, the assessing authority issued a notice on the petitioner under section 11(1) of the Pepsu General Sales Tax Ordinance, 2006 Bk., in respect of the period 1st April, 1955, to 31st March, 1956, for which the petitioner had filed quarterly returns and had paid sales tax according to the returns. The petitioner took the stand that the notice having been issued two years after the expiry of the assessment year was invalid and, therefore, led no evidence nor asked for an opportunity to lead evidence. The assessing authority however made an order of assessment on 13th December, 1960. The Punjab General Sales Tax Act, 1948, was in force in the area when the notice was given to the petitioner: *Held*, (1) that the petitioner as a dealer failed to comply with the terms of the notice issued to it under sub-section (2) and, therefore, the sub-section that was attracted to the case was sub-section (4) and not sub-section (3) of the Punjab General Sales Tax Act, 1948; (2) that the notice issued to the petitioner was within the statutory period, but as section 11(4) applied to the case, an assessment could not be made on the petitioner according to the decision of the Supreme Court in *Madan Lal Arora v. Excise and Taxation Officer, Amritsar* [1961] (12 S.T.C. 387; A.I.R. 1961 S.C. 1565) after the expiry of three years from 31st March, 1956, and, therefore, the assessment made on 13th December, 1960, must be quashed. —NATHU RAM NOHAR CHAND *v.* THE STATE OF PUNJAB [1963] 14 S.T.C. 311 (Punj.).

—*Notice of demand—Whether should be issued before expiry of period of limitation—Best judgment assessment—Whether legal.*—An assessment order under section 21 of the U.P. Sales Tax Act, 1948, passed on 31st March, 1953, in respect of the year 1949-50 could not be said to be barred by limitation on the ground that the notice of demand was issued to the assessee after the expiry of three years from the end of the assessment year. A law may require that a notice of demand must accompany a copy of the assessment order when it is served upon the assessee, but it does not follow that it must be served upon him before the expiry of the period for the making of the assessment order itself. Best judgment assessment has to be by inference and if there is some material to justify the inference it must be maintained. —MOTA SINGH DALIP SINGH *v.* COMMISSIONER OF SALES TAX [1963] 14 S.T.C. 620 (All.).

—*Period of limitation enlarged by retrospective amendment of provision—Right to take action.*—See

GHANSHYAMDAS *v.* THE SALES TAX OFFICER, DURG, M.P. [1964] 15 S.T.C. 128 (M.P.).

Method of assessment—Manufacturer of non-edible oils—Exercise of option to assess on previous year's basis—Subsequent notification by Government enhancing rate of tax on non-edible oils—Effect—Held, that on the language of the provisions of the U.P. Sales Tax Act, 1948, and the notification dated 8th June, 1948, issued by the Provincial Government in exercise of the powers conferred by section 3A of the United Provinces Sales Tax Act, 1948, as amended by the United Provinces Sales Tax (Amendment) Act, 1948, the rates laid down in that notification could only be applied to sales which were actually carried out after the notification came into effect and not to earlier sales. Consequently an assessee who was a manufacturer and a dealer of non-edible oils and who elected the previous year as the basis of his assessment in the assessment year 1948-49 was liable to be assessed only at the flat rate of 3 pies per rupee on the whole of the turnover of the previous year and not at the rates of 3 pies per rupee and 6 pies per rupee on the turnover of the previous year in proportion to the two periods from 1st April to 8th June, 1948, and from 9th June, 1948, to 31st March, 1949. This interpretation of the notification has not given rise to any discrimination between various dealers who chose different methods of assessment. There is no indication in the notification dated 8th June, 1948, that sales, included in the previous year's turnovers, were also to be governed by the new rates laid down in the notification. If there had been any such indication, the notification to that extent might have been challenged as being beyond the scope of the powers conferred on the Provincial Government. A Legislature can give retrospective effect to pieces of legislation passed by it but an Executive Government exercising subordinate and delegated legislative powers cannot make legislation retrospective in effect unless that power is expressly conferred. The words "shall pay on turnover" in section 3 of the U.P. Sales Tax Act, 1948, must be interpreted as indicating that an assessee is liable to pay the tax on turnover in each assessment year. It is not to be interpreted to mean that actual payment of the tax to the Government has to be made before the expiry of the assessment year. The liability to tax being fixed by section 3 the method of assessment adopted required immediate proceedings to be taken inasmuch as the assessee is directed to file his returns within 60 days of the commencement of the assessment year. The liability to tax under the Act arises on the first day of an assessment year and is not liability in

respect of each day of that year. If the liability to tax has already arisen at a particular date, the State Government cannot vary that liability by a subsequent notification. Even the Legislature, in order to do that, would have to make a provision which must be clearly retrospective, indicating that the Legislature intended to alter that pre-existing liability. Section 7B(2) of the Act introduced in 1954 does not apply retrospectively to assessments of the previous years or to cases where the question arises as a result of a variation that was made prior to the introduction of the section. The language of the section clearly indicates that it will only apply when there is any variation in the rate subsequent to the date on which that provision of law was introduced and came into force.—*MODI FOOD PRODUCTS LTD. v. COMMISSIONER OF SALES TAX, U.P.* [1955] 6 S.T.C. 287 (All.) affirmed by the Supreme Court see below.

—*Held*, by the majority (HIDAYATULLAH, DAS GUPTA and SHAH, JJ.) that under the provisions of the U.P. Sales Tax Act, 1948, an assessee who was a manufacturer and a dealer of non-edible oils and who elected the previous year as the basis of his assessment in the assessment year 1948-49 was liable to be assessed only at the flat rate of 3 pies per rupee on the whole of the turnover of the previous year and not, in accordance with the notification dated 8th June, 1948, issued by the Government under section 3A of the Act, at the rates of 3 pies per rupee and 6 pies per rupee on the turnover of the previous year in proportion to the two periods from 1st April to 8th June, 1948, and from 9th June, 1948, to 31st March, 1949. In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The Court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency. A legal fiction must be limited to the purposes for which it has been created and cannot be extended beyond its legitimate field. The turnover of the previous year is fictionally made the turnover of the year of assessment: it is not the actual or the real turnover of the year of assessment. By the imposition of a different tariff in the course of the year, the incidence of tax liability may competently be altered by the Legislature, but for effectuating that alteration, the Legislature must devise machinery for enforcing it against the taxpayer and if the Legislature has failed to

do so, the Court cannot resort to a fiction which is not prescribed by the Legislature and seek to effectuate that alteration by devising machinery not found in the statute. Per DAS and RAJAGOPALA AYYANGAR, JJ.—The assessee was liable to be assessed at 3 pies per rupee on the turnover during the first 69 days of the year and at 6 pies per rupee in respect of the remaining days of the year. *Modi Food Products Ltd. v. Commissioner of Sales Tax, U.P.* [1955] (6 S.T.C. 287) affirmed.—*COMMISSIONER OF SALES TAX, U.P. v. MODI SUGAR MILLS LTD.* [1961] 12 S.T.C. 182 (S.C.).

—*Turnover—Year following the assessment year in which dealer commences business—Assessment on the basis of average monthly turnover of previous year—Whether compulsory—Election of dealer to file return of turnover of assessment year in lieu of turnover of previous year—Effect.*—Sub-section (4) of section 18 of the U.P. Sales Tax Act, 1948, which provides that where a dealer commences business during the course of an assessment year the assessing authority shall fix the turnover of the dealer for the next succeeding year on the basis of the average monthly turnover of the dealer determined by him in accordance with clause (b) or (c) of sub-section (3) of that section for the assessment year in which the dealer commences business, and shall tax him accordingly, is mandatory both as to the method of computation of the turnover and as to the assessment of tax on the turnover: it is not subject to any exception. The statutory obligation imposed upon the assessing authority to tax the dealer under section 18(4) remains absolute for the year following immediately the year in which the business was commenced by the dealer and the method prescribed for determination of the turnover must be applied even if the dealer has elected under rule 39(1) of the U.P. Sales Tax Rules, 1948, to submit returns of his turnover of the assessment year in lieu of the returns of the previous year and has filed quarterly returns for the year immediately succeeding the year in which the dealer commenced his business. Rule 41(5) of the Rules cannot be read so as to modify the express provision of the Act. It may be assumed that it may not have been intended by the Legislature that a dealer who has exercised an option to submit his turnover for the year of assessment instead of the previous year, should still for the year immediately following the year in which he has commenced business be assessed to tax on a notional turnover. But if the Legislature has failed to make an adequate provision enabling assessment to be made in the light of the option, it cannot be assumed that section 18(4) became

subject to such an implied limitation. The court in construing a taxing statute must look at what is clearly expressed, and cannot make assumptions as to the intention of the Legislature. The court will not introduce by interpretation in a taxing statute a provision which the Legislature, if it had appreciated the true position under the statute as enacted, might have made, but has not made.—*COMMISSIONER OF SALES TAX, U.P., LUCKNOW v. MADAN LAL DAYAL CHAND* [1968] 21 S.T.C. 80 (S.C.).

Method of assessment—Manufacturer of coconut oil—Purchase of imported and local copra—Sale of oil and cake within State and in the course of inter-State trade—Use of oil in manufacture of soap—Method of assessment.—See *THE MALABAR OIL MILLS, VALAPAD v. STATE OF KERALA* [1963] 14 S.T.C. 106 (Ker.).

Monthly assessments—Consolidated assessment for whole year without making monthly assessments—Legality.—The assessee elected to be assessed on monthly turnover basis and submitted monthly returns in Form A-3 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939. The Deputy Commercial Tax Officer did not make any provisional assessment month after month separately but made a final assessment for the whole year. The question was whether the Deputy Commercial Tax Officer had power to assess the assessee for the whole year without making a provisional assessment every month: *Held*, that the jurisdiction to make an yearly assessment did not depend upon the existence of monthly assessments though the basis of both was the monthly return and so long as the assessment was made on monthly returns, the yearly assessment was valid.—*PESALA VENKATA SUBBAYYA & BROS. v. STATE OF ANDHRA* [1956] 7 S.T.C. 242 (Andh.).

—Necessity to comply with rule 17(1), Travancore-Cochin General Sales Tax Rules, 1950—Mere submission of monthly returns not enough.—The mere fact that a dealer had filed some monthly returns could not be considered as sufficient to enable him to be assessed according to the method described in sub-rules (2) to (5) of rule 17. If a dealer's turnover exceeded Rs. 20,000, he could adopt the method of assessment prescribed in sub-rules (2) to (5) of rule 17 in lieu of the method described in rules 10 to 15 provided he had complied with the provisions of sub-rule (1) of rule 17.—*K. V. JOSEPH v. SALES TAX OFFICER, SECOND CIRCLE, ALLEPPEY* [1957] 8 S.T.C. 336 (Ker.).

Nature of assessment proceedings.—The assessee was carrying on business for a number

of years without submitting their returns of turnover on the ground that their turnover had not reached the taxable limit. The Deputy Commercial Tax Officer paid a surprise visit to the assessee's business premises, seized certain account books, and finding that they had a taxable turnover assessed them to the best of judgment. He also launched a prosecution against them for failure to furnish the return due under rule 11(1) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939. The criminal court acquitted the accused on the ground that the prosecution had failed to prove beyond reasonable doubt the connection of the accused with the seized books. The question was whether in the appeal by the assessee against the assessment the finding of the criminal court was binding on the Sales Tax Appellate Tribunal: *Held*, that the finding of the criminal court was not binding on the Tribunal and it could arrive at its own conclusion on the material before it regarding the connection between the assessee and the accounts. There was nothing in the conduct of the department in resorting to a criminal court which would preclude an independent investigation for an assessment of tax. Neither the Sales Tax Act nor the Rules provided for an election between the two courses. It was not as if the Sales Tax Officer was under an obligation to choose one of the two alternatives—a criminal prosecution and the making of an assessment. Both courses were open concurrently to the department. So far as civil courts and Tribunals, to which the provisions of the Evidence Act apply, are concerned, the judgment of a criminal court is not admissible in evidence under sections 40 to 43 of the Evidence Act. The procedure of the *quasi* judicial Tribunals, to which the provisions of the Evidence Act do not in terms apply, should conform to cardinal rules of evidence if injustice should be obviated. The assessee could not seek shelter under the doctrine of *autrefois acquit*. That principle can apply only to a second prosecution for the same offence. The proceedings by the department to make an assessment could never be equated to a prosecution for an offence. The principle of *res judicata* embodied in section 11 of the Civil Procedure Code could have no application as the field of its operation is limited to civil actions; nor could the department be precluded from proceeding with the assessment on the ground of acquiescence in the Magistrate's finding and decision.—*MACHERLAPPA & SONS v. GOVERNMENT OF ANDHRA (Now ANDHRA PRADESH)* [1958] 9 S.T.C. 156 (A.P.).

Nature of proceedings under sections 10(3), 11(2) and 11 (4)(a), C.P. and Berar Act.—There is a

fundamental difference between the nature of the proceedings under sections 10(3) and 11(4)(a) of the C.P. and Berar Sales Tax Act, 1947, and the proceedings under section 11(2) of the Act. The proceedings under section 10(3) are proceedings for the purpose of levying a penalty upon the dealer for failing to register or to comply with the requirements of a notice under section 10(1). The proceedings under section 11(4)(a) are taken *in terrorem* and the dealer is penalised by a best judgment assessment in default of compliance. Whereas the proceedings under both the provisions of law are analogous to proceedings for the purpose of imposing a penalty, the proceedings under section 11-A are taken for assessment for the first time.—*MESSRS RAMKRISHNA RAMNATH v. SALES TAX OFFICER, NAGPUR, AND OTHERS* [1960] 11 S.T.C. 811 (Bom.).

Notice of assessment.—The notice of assessment must give the date of assessment.—*RAM PRATAP KAMALIA v. PROVINCE OF BIHAR* [1946] 1 S.T.C. 148.

Notice—Assessment made without issuing proper notice.—Under the Hyderabad General Sales Tax Act, 1950, an Assistant Sales Tax Officer was authorised to deal only with cases where the turnovers did not exceed Rs. 30,000. A notice issued under rule 14 to an assessee directing him to show cause why his turnover should not be determined at Rs. 35,000 was signed by the Assistant Sales Tax Officer. The Sales Tax Officer, who was the competent assessing authority in the case of the assessee, assessed his taxable turnover at Rs. 4,25,000 without issuing any notice: *Held*, that the assessment order was illegal.—*ABDUL KARIM v. THE SALES TAX OFFICER, MAHBOOBNAGAR* [1956] 7 S.T.C. 547.

—*Assessee must be served with notice before assessment is made—Service by affixation—When can be resorted to.*—Before any person can be made liable to pay tax notice must issue to such person. Assessment is a serious matter and tax can only be levied and collected in accordance with law. Therefore before an assessee can be held liable to pay tax, the law as well as the rules of natural justice require that notice, before assessment is made, must be served upon him. Service of notice by affixation, if resorted to in the very first instance, will be clearly in contravention of the provisions of rule 77 of the U.P. Sales Tax Rules, 1948.—*PANNA LAL UMESH KUMAR v. ASSISTANT SALES TAX OFFICER, ALIGARH* [1965] 16 S.T.C. 146 (All.).

Issue of notice—Limitation.—See under NOTICE.

Penalty—Assessment and imposition of penalty by single order under section 13(5), Bihar Sales Tax

Act, 1947—Legality.—*JUGAL KISHORE RAMGOPAL v. THE STATE OF BIHAR* [1955] 6 S.T.C. 272 (Pat.).

Provisional assessment—Dealer in hides and skins—Submission of monthly returns but failure to remit tax along with returns—Consolidated assessment and demand at the end of year—Whether precluded by rule 15—Validity of assessment.—The assessee, a dealer in hides and skins, submitted monthly returns of turnover in Form A-4 as required by rule 15(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939. He however failed to remit with each of the monthly returns the tax payable on the turnover for the previous month as required by that sub-rule. The departmental authorities did not take immediate action, as they were entitled to under sub-rule (4), but at the end of the year the total turnover for the year was ascertained and the tax due was computed and demanded. The assessee contended that he could be assessed only in the manner provided by rule 15(4) and that the assessment made by the authorities was therefore invalid: *Held*, that, under the Act, the basic rule is that sales tax is a tax based on the annual turnover of every dealer and rule 15 is not to be understood as a departure from this provision. The several sub-rules of that rule have to be understood as providing for provisional assessments and the payments of the provisional amounts of the tax have all to be adjusted at the end of the year. Therefore a consolidated assessment and demand by the authorities at the end of the year was not precluded by rule 15 and the assessment made by them was valid. The rules as amended by notification dated 26th February, 1954, only clarify what was already implicit in the rules as they stood before the amendment.—*P. ABDUL MATHEEN v. THE DEPUTY COMMERCIAL TAX OFFICER, AMBUR, AND ANOTHER* [1957] 8 S.T.C. 825 (Mad.).

Provisional assessment—No submission of advance estimate of turnover or periodical returns of actual turnover—Validity of assessment based on previous year's transactions—Whether assessment validated by validation clause of Act 17 of 1955.—The true meaning of section 4 of the Mysore Sales Tax Act, 1948, as amended by Act 17 of 1955, is that the authorities, before making a provisional assessment under the said section, have to require a dealer to furnish an estimate of his turnover as required in the said section and as may be prescribed by the rules and after that return comes to them, they may proceed to determine the amount of tax payable either on the

basis of the said return or on the basis of the previous year's transactions. The assessing authorities cannot ignore that part of the section which requires an assessee to furnish an advance estimate of his turnover and proceed merely on the basis of his transactions in the previous year. Consequently a provisional assessment in respect of the sale transactions ending with 31st March, 1955, of the petitioner, who had not been required to furnish either an advance estimate of his turnover or periodical returns of the actual turnover, could not be justified even under the validation clause of the Amending Act 17 of 1955.—*S. KRISHNADEVARAYA v. ASSISTANT SALES TAX OFFICER AND OTHERS* [1958] 9 S.T.C. 793 (Mys.).

Provisional and final assessments—Scheme of Madras Act.—The scheme of the Madras General Sales Tax Act, 1959, and the history of section 13 clearly show that the power to demand provisional returns and make provisional assessment is a power separate from the power to make a final assessment. It is only where an assessment is made under section 12(2) that there can be any room for applying section 12(3). Although an assessee submitted erroneous provisional monthly returns, they could not be made the basis of an assessment under section 12(2) if before an assessment order is made, the assessee informs the assessing officer of the correct return of the turnover. In such a case the officer has got to make the assessment only on the basis of such correct return and not on the basis of the provisional returns. It does not matter in which form the correct return of the turnover is brought to the notice of the assessing officer before he made the final order under section 12(2). The substance and not the form should be regarded.—*THE STATE OF MADRAS v. M. S. K. SHAHUL HAMEED* [1967] 19 S.T.C. 288 (Mad.).

Provisional assessment—Return filed not accepted—Necessity to comply with rule 15, General Sales Tax Rules, 1963.—Rule 15 of the General Sales Tax Rules, 1963, requires that if, for any reason, the return submitted by an assessee is not acceptable to the Sales Tax Officer, he should give notice to the assessee to produce his account books to substantiate the return submitted by him. Failure to comply with this rule by the Sales Tax Officer in fixing provisionally the sales tax payable by an assessee for the year 1963-64 would be unwarranted.—*GANGADHARAN PILLAI v. SALES TAX OFFICER, FIRST CIRCLE, ERNAKULAM* [1967] 19 S.T.C. 289 (Ker.).

—Section and Rules providing for provisional assessment and advance payment of tax—Validity.—See *ADVANCE PAYMENT OF TAX* pages 10-11 *supra*.

Provisional assessment—Rule 16(b) authorising officer to make estimate of turnover himself—Whether repugnant to section 5(8) and invalid.—Section 5(8) of the Mysore Sales Tax Act, 1957, which provides for a provisional assessment, only empowers the assessing authority to determine the tax payable by a dealer in respect of any period on the basis of the estimate of returns furnished by the dealer or on the basis of transactions of the dealer in the previous year. It does not authorise him to make an estimate of the turnover himself. Rule 16(b) of the rules framed under the Act in so far as it empowers him to make such estimate is clearly repugnant to section 5(8) of the Act and is therefore invalid.—*C. GOKULCHAND v. ASSISTANT COMMERCIAL TAX OFFICER, KOLAR CIRCLE* [1960] 11 S.T.C. 567 (Mys.).

—Registered manufacturer of groundnut oil—Rebate—Non-production of accounts—Whether rebate can be disallowed.—Under the Madras General Sales Tax Act, 1939, and the Rules framed thereunder, there is no difference between the mode of making an assessment in the case of dealers who submit their returns once in a year and dealers who submit their returns every month. In both the cases, the final assessment has to be made by the assessing authority after a scrutiny of the accounts and after the authority is satisfied that they are correct and complete. The provisional assessment on the basis of the monthly returns is designed for the benefit of the dealer and there is no obligation on his part to opt out to this system. In case he so opts out, he would have the advantage of paying the tax in monthly instalments, subject, however, to the final assessment being made. Therefore non-production of accounts before the assessing authority by a manufacturer of groundnut oil registered under rule 18 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, would entail the rejection of the claim for rebate provided by that rule even where the dealer was being assessed on the basis of his monthly returns. *State of Andhra Pradesh v. Sri Siharmanjaneya Rice, Groundnut and Flour Mill* [1962] (13 S.T.C. 31) distinguished.—*GOWLI NAGAPPA v. STATE OF ANDHRA PRADESH* [1963] 14 S.T.C. 42 (A.P.).

Quarterly assessments—Separate assessment for one quarter in which no return is submitted—Legality—Rebate under section 8(5)—Whether can be claimed in the assessment for subsequent three quarters in which returns had been filed in time.—Under the provisions of clauses (a) and (b) of section 8(1) of the Madhya Bharat Sales Tax Act, 1950, while the assessment of taxable turnover and determination of tax due for any year can be made after

the returns for all the periods of that year have become due, in the event of any dealer failing to submit a return for any quarter, the assessing authority can, and is required to determine the turnover of the dealer for this quarter to the best of his judgment and assess the tax on its basis. Consequently a separate assessment of the tax for a quarter for which no return has been filed is legal. The proper time for an assessee to raise the question of rebate under section 8(5) in respect of a particular quarter is when the tax is being actually determined by the assessing authority under section 8(1)(b) or in an appeal against that assessment. Where in respect of the quarter ending 30th June, 1950, the assessee was assessed to tax under section 8(1)(b) and that assessment became final, it was not open to him to claim, at the time of the determination of the tax for the three subsequent quarters for which he had submitted returns in time, that he was entitled to a rebate under section 8(5) in respect of the first quarter also.—*RAMANLAL POONAMBHAI v. COMMISSIONER OF SALES TAX, MADHYA BHARAT GOVERNMENT* [1957] 8 S.T.C. 305 (M.P.).

Quarterly returns—*Whether assessment can be made as and when return is filed or only after expiry of the year.*—The sales tax imposed under the Punjab General Sales Tax Act, 1948, is a yearly tax and therefore the assessment has to be made only at the end of the year and cannot be made during the pendency of the year as and when the return is filed. There is no machinery in the Act by which the assessment can be made every time a return for a period is filed. An order of assessment for the quarters ending 30th June, 1962, and 30th September, 1962, before the expiry of the assessment year ending 31st March, 1963, was therefore illegal. *Mathra Parshad and Sons v. State of Punjab* [1962] (13 S.T.C. 180; A.I.R. 1962 S.C. 745) followed. *Tara Chand Lajpat Rai v. The Excise and Taxation Officer, Ludhiana* (Civil Writ No. 1123 of 1962 decided on 31st October, 1963) overruled.—*MANSA RAM SUSHIL KUMAR v. THE ASSESSING AUTHORITY, LUDHIANA* [1964] 15 S.T.C. 857 (Punj.). This decision was overruled by a Full Bench. See below:—

Quarterly returns—*Scheme of Punjab Act.*—Tax could be assessed under section 11 of the Punjab General Sales Tax Act, 1948, on the basis of quarterly returns submitted by a dealer before the expiry of the relevant financial year. An Act of a Legislature is intended to be fairly workable and in the absence of a statutory provision or a compelling reason Court should always lean to interpret a statute in such a manner as to achieve and secure its object. When the assessment of

periodical returns cannot admittedly result in any difference in the incidence of taxation and in the quantification of the tax and when the statute requires monthly or quarterly payments of the amount of the tax in accordance with the period prescribed for submitting returns, quarterly assessments cannot possibly affect the assessee prejudicially. On the other hand, there seems to be no reason why assessment proceedings must wait till the expiry of the year after the submission of periodical returns. There does not appear to be any reason for treating quarterly assessments as provisional and, therefore, there is no necessity of searching in the Act for any provision like section 22-B of the Income-tax Act, 1922. *Tara Chand Lajpat Rai v. The Excise and Taxation Officer, Ludhiana* (Civil Writ No. 1123 of 1962) approved. *Mathra Parshad and Sons v. State of Punjab* [1962] (13 S.T.C. 180) explained. *Mansa Ram Sushil Kumar v. The Assessing Authority* [1964] (15 S.T.C. 857) overruled.—*Om PARKASH RAJINDER KUMAR v. SHRI K. K. OPAL, EXCISE AND TAXATION OFFICER (ENFORCEMENT), AMRITSAR* [1967] 19 S.T.C. 153 (Punj.).

Quarterly returns—*Assessment based on quarterly returns before expiry of thirty days as provided in rule 20—Legality—Necessity to pass order under rule 23 to assess for shorter period—Validity of assessment.*—The petitioner-firm, which was registered as a dealer under the Punjab General Sales Tax Act, 1948, filed returns for the first three quarters of the financial year 1963-64, ending 31st December, 1963. Before the expiry of the last quarter a notice dated 19th February, 1964, was issued to the petitioner by the Assessing Authority in Form S.T. XIV for production of up-to-date account books for the whole of the year 1963-64 including the quarter which had not expired along with a notice to show cause as to why the registration certificate of the petitioner should not be cancelled under section 7(4). The petitioner did not file any return in the prescribed form for the period ending 31st March, 1964, but a return for the first fourteen days of January, 1964, was filed with the Assessing Authority under orders from him. The Assessing Authority by his order dated 9th July, 1964, cancelled the registration certificate of the petitioner under section 7(6)(a) with effect from 11th March, 1964, on the petitioner's application that it had discontinued business with effect from 2nd March, 1964. The Assessing Authority also disallowed certain exemptions claimed by the petitioner and assessed the petitioner for the whole of the financial year 1963-64. On an application filed under Article 226 : *Held*, (1) that sales tax can be assessed under section 11 on the basis of quarterly returns submitted by a

dealer and that it is not necessary that assessment proceedings should be taken up only after the expiry of the whole assessment year; (2) that in the absence of an order by the Assessing Authority under rule 23 of the Punjab General Sales Tax Rules, 1949, prescribing a shorter period for furnishing the returns, the petitioner could not in law be compelled to file a return relating to a broken part of the quarter and in the absence of any return for the period 1st January, 1964, to 31st March, 1964, or 2nd March, 1964, assessment proceedings for that period could not have been taken by the Assessing Authority before the expiry of thirty days from the last day of the quarter. The notice dated 19th February, 1964, in so far as it related to the fourth quarter of 1963-64 and the assessment proceedings commenced during that time relating to the said quarter were, therefore, wholly illegal and without jurisdiction. As the assessment order did not show as to how much demand had been created for the period ending 31st December, 1963, and how much for the last quarter, no part of the order could be sustained. —*JAI GOPAL AND COMPANY v. THE ASSESSING AUTHORITY* [1968] 21 S.T.C. 492 (Punj.).

Validity of assessment—Assessment made by Additional Sales Tax Officer.—An Additional Sales Tax Officer is not within the list of officers given under rule 3 of the C. P. and Berar Sales Tax Rules and no appeal has been provided to any authority against an assessment made by him. An Additional Sales Tax Officer has therefore no jurisdiction to make an assessment and an assessment made by him can be quashed on an application under Article 226 of the Constitution. [The applicant in this case also challenged an assessment made by the Sales Tax Officer but he had preferred an appeal with respect to this assessment and that appeal was pending before the Commissioner of Sales Tax. The learned Judges did not say anything with respect to this matter as the applicant had his remedy under the Sales Tax Act and had actually pursued it]. —*CENTRAL POTTERIES LTD., NAGPUR v. STATE OF MADHYA PRADESH* [1952] 3 S.T.C. 15 (Nag.).

—Assessment made by Assistant Commercial Tax Officer—Validity.—The Government can authorise the Deputy Commissioner of Commercial Taxes to make appointments to man his office and help him in carrying out the administrative functions entrusted to him. Section 2(2-a) of the Madras General Sales Tax Act, 1939, does not qualify the word “person” as one directly appointed by the Government and it takes in any person authorised by the Government to make an assessment. Therefore, the Assistant Commercial Tax Officer, who

was a person appointed by the Deputy Commissioner had been legally authorised by the Government by issuing the necessary notification in exercise of the powers conferred upon it under section 2(2-a) to make assessments. Such assessments were not invalid on the ground that the Assistant Commercial Tax Officers were not appointed by the Government. —*BATCHU SREERAMULU CHETTY v. THE STATE OF ANDHRA (NOW ANDHRA PRADESH)* [1958] 9 S.T.C. 215 (A.P.).

—Assessment made by Assistant Commissioner under Bengal Finance (Sales Tax) Act, 1941—Validity.—An assessment made by the Asst. Commissioner of Commercial Taxes under section 11 of the Bengal Finance (Sales Tax) Act, 1941, in respect of a dealer (or his predecessor) whose gross turnover of the previous year does not exceed Rs. 15 lakhs or whose taxable turnover of the previous year does not exceed Rs. 3 lakhs would be without jurisdiction and illegal and the assessment should be done afresh by the Commercial Tax Officer who has jurisdiction over the area in question. As such an assessment is illegal, the assessment made by him for subsequent years would also be without authority even if during those years the taxable turnover as determined by him did not fall below Rs. 3 lakhs. —*CALCUTTA TANNERIES (1944) LTD. v. STATE OF WEST BENGAL* [1952] 3 S.T.C. 105.

—Assessment made by Commercial Tax Officer on instructions and advice of superior officer obtained behind back of assessee—Validity.—Though the Commercial Tax Officer was satisfied on the materials placed by the assessee and their representative that the assessee was not liable to pay sales tax in respect of certain transactions, he referred the matter first for instructions and then for obtaining the “valued opinion” of his superior, the Assistant Commissioner (C.S.), and the latter expressed his opinion that the assessee was liable in respect of these transactions. The Commercial Tax Officer did these things behind the back of the assessee, who had no opportunity of meeting the point of view adopted by the Assistant Commissioner (C.S.). Following the instructions and advice of the Assistant Commissioner (C.S.) the officer assessed the assessee to sales tax: *Held*, that the procedure adopted by the officer was contrary to the principles of natural justice and it was unfair and was calculated to undermine the confidence of the public in the impartial and fair administration of the sales tax department. —*MAHADAYAL PREMCHANDRA v. SALES TAX OFFICER, CALCUTTA, AND ANOTHER* [1958] 9 S.T.C. 428 (S.C.).

—Assessment where notice issued not in strict accordance with rule 9, Madras General Sales Tax

(Turnover and Assessment) Rules—Validity.—In the absence of proof of any prejudice to an assessee he cannot impeach the validity of an order of assessment simply because the terms of the notice issued by the assessing authority are not in strict technical accordance with the language of rule 9 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939.—*KONDAPALLI VIRARAJU v. THE STATE OF ANDHRA (NOW ANDHRA PRADESH)* [1958] 9 S.T.C. 42 (A.P.).

—*Assessment under Madhya Pradesh Act, 1947—Validity.*—As soon as the Central Provinces and Berar Sales Tax Act, 1947, came into force, the appellant applied to the Sales Tax Officer, Nagpur, for registration as a dealer and on 21st July, 1947, the officer granted to the appellant the certificate of registration. For the period of assessment 1st June, 1947, to 30th September, 1951, the appellant challenged the assessment on the grounds, (1) that there was no valid appointment of the officer and no proper conferment upon him of the powers as required by section 3(2) of the Act inasmuch as the rules came into force only on 15th August, 1947, after the certificate of registration was granted to the appellant and therefore there was no valid registration and the assessment made by the officer was illegal and without jurisdiction; (2) that the tax levied under the Act was not sales tax but corporation tax falling under entry 46 in List I of the Seventh Schedule to the Government of India Act, 1935, and therefore the Act was not a valid piece of legislation: *Held*, (1) that the question of the validity of the registration was not relevant in considering whether the assessment was valid or not. The liability to pay tax arose by virtue of section 4, which was the charging section, and the machinery provisions for the recovery of the tax could not control the charging section or other provisions creating the liability to pay the tax. The assessment made by the officer was therefore legal; (2) that the tax levied by the Act could not be said to be corporation tax, simply because the incidence of the tax might fall on corporations. The pith and substance of the enactment was to tax sales of goods alone and nothing else and the Act was therefore a valid piece of legislation.—*CENTRAL POTTERIES v. STATE OF MADHYA PRADESH* [1960] 11 S.T.C. 399 (Bom.).

—*Assessment of unregistered dealer by Assistant Commissioner on whom powers are delegated—Validity.*—Under section 8(5) of the C.P. and Berar Sales Tax Act, 1947, or section 15(8) of the M.P. General Sales Tax Act, 1958, once a penalty has been imposed on a dealer for failure to get himself registered then the dealer has to be

treated as a registered dealer. But the fundamental requirement for the fictional treatment of a dealer as a registered dealer is that the conviction or imposition of penalty on him for failure to apply for registration must be by the competent authority. If an authority has not the power and jurisdiction to deal with a matter, then it cannot by illegal assumption of jurisdiction deprive the competent authority of the power and jurisdiction in regard to that matter. Where the petitioner had more than one place of business, the Sales Tax Officer who was competent to make the assessment on the petitioner or to impose a penalty for non-registration was the Sales Tax Officer of the place where the petitioner's principal place of business was situated. The Sales Tax Officer of any other place had no jurisdiction to make an assessment or to impose a penalty for non-registration and an assessment and imposition of penalty by such an officer were without jurisdiction and null and void. In such a case section 8(5) of the 1947 Act could not come into play so as to give the petitioner the fictional status of a registered dealer. A notice under section 18(6) of the 1958 Act read with rule 33 issued by the Assistant Commissioner who was a person appointed under section 3 to assist the Commissioner and to whom all powers under section 18(6) had been delegated by the Commissioner in conformity with section 30 read with rule 68, on information received by him and after satisfying himself as required by section 18(6) was not bad or beyond the jurisdiction of the Assistant Commissioner. The petitioner had taken several contracts for the supply of ballast to the railways. The Collectors of various districts gave leases of quarries to the petitioner in their districts for quarrying stones and sand. The petitioner extracted material and sold it in the form of ballast to the railways at the contracted rates: *Held*, that it was not as if the execution of any work was entrusted to the petitioner and in that execution the petitioner used the ballast. There was an agreement to sell the material, namely, ballast as such, and that being so the supply of ballast could not but be regarded as a sale transaction.—*SETH PAMANDAS SINDHI v. STATE OF MADHYA PRADESH AND OTHERS* [1963] 14 S.T.C. 74 (M.P.).

—*Assessment order by Sales Tax Officer pending reference—Validity.*—The Sales Tax Officer made an order holding that no sales tax was payable by the petitioner, but the Commissioner, acting under section 22-B of the C.P. and Berar Sales Tax Act, 1947, remanded the case for a fresh assessment in accordance with the directions given by him. The petitioner's appeal to the

Board of Revenue against the Commissioner's order was dismissed by the Board and its application under section 23(1) for stating a case to the High Court was also rejected by the Board. On an application under section 23(2)(b) the High Court directed the Board to state a case. While the Board had yet to state the case, the Sales Tax Officer recommenced the assessment proceedings pursuant to the order of remand made by the Commissioner, and passed an order assessing the petitioner to sales tax and imposing a penalty on it. The petitioner filed an appeal against the order of the Sales Tax Officer without paying the requisite tax deposit and also filed an application under Article 226 for quashing the assessment order of the Sales Tax Officer: *Held*, that notwithstanding the making of a reference the order of the Tribunal remained operative and effective for the time being and therefore the Sales Tax Officer had jurisdiction to resume the assessment proceedings, and the assessment order made by him was not without jurisdiction: *Held further*, that though the Sales Tax Officer was not legally bound to stay the assessment proceedings till the disposal of the reference pending in the High Court, both judicial propriety and decorum required that he should have awaited the decision of the High Court on the reference. It would be proper for the taxing authorities to see that no order of any kind, including an order of the rejection of the appeal for default in payment of the requisite tax deposit, was passed till the reference was answered by the High Court.—HAJI LATIF ABDULLA *v.* BOARD OF REVENUE, M.P., GWALIOR [1964] 15 S.T.C. 182 (M.P.).

—*Transfer of case—Assessment made by Commercial Tax Officer, Central Circle—Validity.*—The assessee-firm obtained a certificate of registration as a dealer under the Bengal Finance (Sales Tax) Act, 1941, from the Commercial Tax Officer, Amratolla Charge. The assessee alleged that they submitted their quarterly returns for the quarters ending 27th January, 1960, and 24th April, 1960, and deposited the admitted amount of tax. On 7th June, 1960, the Commercial Tax Officer, Amratolla Charge, served a notice in Form VI upon the assessee stating therein, (i) that inasmuch as the assessee had not furnished any return for the quarter ending 24th April, 1960, and (ii) that inasmuch as he was not satisfied that the return filed by the assessee for the quarter ending 27th January, 1960, was correct and complete, he proposed to assess the assessee under section 11(1). The Commercial Tax Officer thereafter made a best judgment assessment on the assessee and issued a notice of demand. The assessee preferred an appeal before the Assistant Commissioner of

Commercial Taxes, Dharamtolla Circle, under the provisions of section 20(1). While this appeal was pending the assessee received a letter from the Commercial Tax Officer, Central Section, West Bengal, assuming jurisdiction over them in all matters under the Bengal Finance (Sales Tax) Act, 1941, and the Central Sales Tax Act, 1956. On 14th December, 1961, the Assistant Commissioner of Commercial Taxes allowed the assessee's appeal, set aside the assessment and directed the Commercial Tax Officer to make a fresh assessment. The Commercial Tax Officer, Central Section, assumed jurisdiction after remand and notwithstanding the assessee's objections made an order of assessment on 30th January, 1962. The assessee moved the High Court under Article 226 of the Constitution and raised, *inter alia*, the contention that there was a wrong assumption of jurisdiction by the Commercial Tax Officer, Central Section, which rendered the assessment on the assessee void and unsustainable: *Held*, that having regard to the Bengal Finance (Sales Tax) (Amendment) Act, 1962, Notification No. 13 F.T. dated 23rd August, 1947, Notification dated 14th June, 1954, relating to the delegation of powers by the Commissioner and the order of transfer made by the Commissioner in the present case, the Commercial Tax Officer, Central Section, had jurisdiction to make the assessment and therefore the assessment made on the assessee after remand could not be struck down. *Bidi Supply Co. v. Union of India and Others* [1956] (29 I.T.R. 717; 1956 S.C.A. 560) distinguished.—MADANLAL MAHAWAR AND OTHERS *v.* THE COMMERCIAL TAX OFFICER, CENTRAL SECTION, WEST BENGAL, AND OTHERS [1965] 16 S.T.C. 1071 (Cal.).

—*Exemption under licence to deal in cotton yarn—Discovery of two sets of accounts—Sale at black-market prices—Assessment to sales tax—Validity.*—See K. R. C. S. BALAKRISHNA CHETTY *v.* STATE OF MADRAS [1961] 12 S.T.C. 114 (S.C.) under EXEMPTION.

Assessment order levying no tax not communicated to assessee—Validity of order.—See PERIASAMI NADAR *v.* STATE OF MADRAS [1962] 13 S.T.C. 328 (Mad.) under REVISION.

Assessment order resulting in no tax not communicated to assessee—Whether suo motu power of revision can be exercised.—See MOHAMED SULAIMAN & Co. *v.* DEPUTY COMMISSIONER OF COMMERCIAL TAXES [1964] 15 S.T.C. 593 (Mad.) under REVISION.

Nil assessment not communicated to assessee—Jurisdiction of Deputy Commissioner to revise.—A. M. SAFIULLA & Co. *v.* THE STATE OF MADRAS [1966] 17 S.T.C. 79 (Mad.) and [1968] 21 S.T.C.

274 (S.C.). See also *THE STATE OF MADRAS v. P. M. BATCHA AND COMPANY* [1965] 16 S.T.C. 59 (Mad.) and [1967] 20 S.T.C. 273 (S.C.) under REVISION.

Validity of assessment—Whether can be gone into by criminal courts.—See OFFENCES.

Validity of assessment order—Whether can be considered in application filed under Article 226 of the Constitution of India.—See WRITS UNDER CONSTITUTION.

Validity of assessment based on Government order—Order of Government based on negotiations between Betel-Leaves Dealers' Association and Government—No evidence that assessee was party to that order—Assessment based on that order—Validity.—*SITARAM KAMAL PRASAD v. COLLECTOR OF SALES TAX, ORISSA* [1955] 6 S.T.C. 339 (Ori.).

Vires of enactment not challenged—Maintainability of application under Article 226 challenging assessment.—See WRITS UNDER CONSTITUTION.

Writ petition—Petition under Article 226, Constitution, challenging validity of assessment after it has become final.—*Maintainability.*—See WRITS UNDER CONSTITUTION.

Writ petition under Article 226 prior to completion of assessment—Maintainability.—See WRITS UNDER CONSTITUTION.

Writ petition for quashing assessment when appeal is pending—Maintainability.—See *ASSOCIATED CEMENT CO. v. COMMERCIAL TAX OFFICER* [1959] 10 S.T.C. 596 (A.P.).

Assessment, whether illegal—Maintainability of writ application under Article 226, Constitution.—The question whether or not an assessment is a best judgment assessment must depend on the facts and circumstances of each case and, therefore, must, in the fitness of things, be determined by the appellate authority. Where the case is not one of those clear-cut cases, in which it is possible to find that the assessment is outside the statute and without the authority of law, the ordinary remedy provided by statute is both adequate, convenient and effective and there is no justification to challenge the assessment under Article 226 of the Constitution. Merely because the assessee who appeals has to deposit the tax in accordance with law does not make the remedy illusory or ineffective, where it is not the assessee's case that he is not financially in a position to deposit the amount. Where the assessee has completely failed to point out any serious and self-evident error of law manifestly apparent on the record showing that the assessment is clearly and patently contrary to law, the assessee should

not be permitted to by-pass and ignore proper procedure prescribed by the Legislature for the redress of grievances under taxing statutes. Tax laws in India are largely premised or based on the theory of self-assessment and the taxpayer usually makes out his return computing the tax on it and files the return and pays the tax. It naturally calls for and requires honesty from a great majority of the taxpayers in order to make the tax administration feasible. In this background also the High Court should be slow in interfering on writ side with the departmental proceedings intended to investigate into the dealings of the assessee. The procedural measures for collecting or realising taxes assessed call for a somewhat liberal construction tending to facilitate the object, particularly in a welfare State where it operates beneficially in the larger interests of the society as a whole. The long range objective of all tax measures is the accomplishment of good social order and the policy of the law, therefore, is to ensure the collection of taxes by reasonably facilitating the working of the statutory procedural machinery for this purpose, and, whenever it is possible on the statutory language to do so consistently with the cause of justice, courts should construe the relevant provision to accomplish the result and not to retard, obstruct or delay it, without truly compelling reasons. For a welfare democratic State, revenue is its very life-blood and that seems to be the truly underlying purpose of the proviso to section 20(1) of the Punjab General Sales Tax Act, 1948. Thus except for manifestly compelling reasons, the High Court should help to achieve and promote this legislative design and not too readily agree in the exercise of its discretionary prerogative writ jurisdiction to interfere with its operation.—*KHEM CHAND VIJAY KUMAR v. SHRI J. S. MALHOTRA, ASSESSING AUTHORITY, JULLUNDUR* [1963] 14 S.T.C. 821 (Punj.).

Illegal assessment—Whether assessee entitled to claim interest on amount of tax collected from him.—See *STATE OF ANDHRA PRADESH v. MOTHEY GANGARAJU* [1963] 14 S.T.C. 112 (A.P.).

Ex parte assessment.—See under SALES TAX PROCEEDINGS.

ASSOCIATION OF PERSONS

Member of association—Liability for tax due from association—Tax due from District Refugee Cloth Merchants Syndicate—Whether can be recovered from members—Patiala and East Punjab States Union General Sales Tax Ordinance, 2006 B.K., Sec. 2(d)—Patiala and East Punjab States Union General

Sales Tax Rules, 2006 B.K., Rule 39(1).—**RAMESHWAR DASS v. THE EXCISE AND TAXATION COMMISSIONER, PEPSU, PATIALA, AND OTHERS** [1959] 10 S.T.C. 218 (Punj.).

Tax due from association registered under Societies Registration Act—Attachment of private property of President—Legality—Scope of section 17(2), Madras General Sales Tax Act, 1939.—**THE STATE OF MADRAS, In re** [1958] 9 S.T.C. 169 (Mad.).

—See also CO-OPERATIVE SOCIETY and FIRMS.

AUCTIONEER

Whether dealer.—A person who carries on the business of auctioneering goods in consideration of commission on sales is a “dealer” within the meaning of section 2(c) of the Bengal Finance (Sales Tax) Act, 1941. An auctioneer has dominion and possession of the goods. It is the stroke of his hammer that completes the sale and transfers property or ownership in the goods to the bidder who purchases the goods. He is the person who is actually engaged in the business of selling the goods. The sales tax is on the transaction of sale and not on the goods. It is because of the sale that the tax is imposed. It is therefore immaterial whether the auctioneer is the owner of goods or not.—**STAYNOR & Co. v. COMMERCIAL TAX OFFICER** [1951] 2 S.T.C. 111 (Cal.).

Definition of “dealer” which includes auctioneer—Validity.—Where an auctioneer is selling specific chattel and/or goods for an unknown or a disclosed principal and where the buyer knows that the auctioneer is not the owner, the auctioneer cannot be considered as the seller and there is no contract of sale between him and the buyer. In such a case, the auctioneer is not even a party to the sale. Therefore, in such transactions the auctioneer cannot be made liable to payment of sales tax and the extension of the definition of the word “dealer” in Explanation 2 of section 2(c) of the Bengal Finance (Sales Tax) Act, 1941, so as to include an auctioneer is *ultra vires* the Legislature. Under the Government of India Act, 1935, the Provincial Legislatures were empowered to tax only “sale of goods” as defined in the Indian Sale of Goods Act, 1930. If, therefore, there is any attempt to tax something which is not a sale of goods according to the Sale of Goods Act, then the legislation would be void as being *ultra vires* entry 48, List II, of Schedule VII to the Government of India Act, 1935. The position of an auctioneer is practically the same under the Indian law as that obtaining in England. **Staynor & Co. v. Commercial Tax Officer** [1951] (2 S.T.C. 111) not followed.—**CHOWRINGHEE SALES BUREAU LTD. v. STATE**

OF WEST BENGAL AND OTHERS [1961] 12 S.T.C. 535 (Cal.).

—The respondents were employed by fishermen for auctioning the catches brought by them. Every day the fishermen went out in boats or canoes and brought the catches which were stacked on the foreshore and the owners stood by the side of these catches. The respondents cried out the upset price, invited bidders and when the price offered exceeded the reserve price the sales were knocked down in the names of the highest bidders who paid the prices to the owners and took over from them the catches. If the reserve prices were not reached the owners took the fish to the market. The respondents were paid for the duties performed by them at the rate of quarter to one anna per rupee: *Held*, that the respondents at no stage handled the goods and had no authority to transfer the property in the goods to the purchasers and they did nothing more than bringing the purchasers and sellers together. Consequently they would not come within the meaning of “dealers” and were not liable to sales tax. Persons who do nothing more than crying out the bids at the auction and who have no custody or possession over the property auctioned and have no authority to pass the property in the goods to the purchasers can only be brokers.—**THE PUBLIC PROSECUTOR v. M. THOMMAIA FERNANDO AND OTHERS** [1953] 4 S.T.C. 331 (Mad.).

—**Auctioneer—Whether dealer—Auctioneer should carry on business—Question has to be decided with reference to facts and circumstances.**—The question whether an auctioneer is a dealer within the meaning of section 2(g) of the Madras General Sales Tax Act, 1959, has to be determined not solely by reference to the fact that he describes himself as an auctioneer, but has to be considered in the light of the particular contract between him and the purchaser and the surrounding circumstances. However for the purpose of section 2(g), the liability to tax is attracted only to the person who carries on the business of buying and selling, supplying or distributing the goods and this condition has to pre-exist before any of the various categories of persons (which include an auctioneer) referred to in the sub-clauses of that section can be made liable as dealers. How far this condition exists will be a question of fact in each particular case. Where an auctioneer functioned only as an agent to secure the most advantageous bid for the principal in the auction and thereafter it was the principal's agent who accepted the offer of the highest bidder and completed the contract, the auctioneer would not fall within the definition of dealer in section 2(g) of the Act. The

fact that the auctioneer under special instructions from the seller recovered the money from the highest bidder would not constitute him a dealer for the purpose of sales tax liability. *Chowringhee Sales Bureau Ltd. v. State of West Bengal and Others* [1961] (12 S.T.C. 535) dissented from.—*ZACKRIA SONS PRIVATE LIMITED v. STATE OF MADRAS* [1965] 16 S.T.C. 136 (Mad.).

—*Auctioneer—Whether dealer—Public auction of unredeemed articles pledged with pawnbrokers who deliver possession to bidders—Liability of auctioneer to sales tax.*—The auctioneer is included in the definition of dealer in section 2(g) of the Madras General Sales Tax Act, 1959, only as an instance of other types of dealers who are also referred to in the definition. But the main part of the definition at the beginning of section 2(g) refers to a person who carries on the business of buying, selling, supplying or distributing goods. Before these requirements can apply to a dealer, for the purpose of levy of sales tax the transaction must amount to a sale as defined in section 2(n) of the Act. That definition makes it necessary that there should be a transfer of property in the goods by one person to another in the course of business for cash or deferred payment or other valuable consideration. The provisions in the Madras Pawnbrokers Act, 1943, and, in particular, the obligation that auction sales of unredeemed goods shall be effected according to certain prescribed rules through approved auctioneers are intended to safeguard the pledgers of goods from the effect of nominal or bogus sales of their goods by pawnbrokers in the event of non-redemption. The auctioneer will be carrying out the obligations under the rules, even without taking possession of the pledged goods and delivering them to the highest bidder on the fall of the hammer. Where the respondent, doing the business of selling in public auction unredeemed articles pledged with pawnbrokers, brought the bidders and the pawnbrokers into contact with each other and also arranged for the holding of a sale in an open and fair manner, giving the widest publicity to the sales, but it was the pawnbrokers who ultimately delivered possession of the goods to the bidders: *Held*, that the respondent discharged only the duty of a crier or a broker who brought the parties together, but he was not a dealer who transferred the property in the goods to the highest bidder and he was therefore not liable to sales tax. *Zackria Sons Private Limited v. State of Madras* [1965] (16 S.T.C. 136) referred to.—*THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES, MADRAS DIVISION, MADRAS-7 v. SRI DAYANAND CORPORATION, MADRAS-1* [1968] 21 S.T.C. 346 (Mad.).

AVIATION SPIRIT

Aviation spirit supplied at aerodrome to aircraft bound for foreign destinations—Whether taxable—Whether entitled to exemption under Article 286(1) (a) or (b), Constitution of India—Bengal Motor Spirit Sales Taxation Act (V of 1951)—Bengal Motor Spirit Sales Taxation (Second Amendment) Act (XXXII of 1954), Sec. 2(a)(i).—BURMAH SHELL OIL STORAGE AND DISTRIBUTING COMPANY OF INDIA LTD. v. COMMERCIAL TAX OFFICER AND ANOTHER [1957] 8 S.T.C. 142 (Cal.) affirmed by Supreme Court in [1960] 11 S.T.C. 764.

BANK

Sale by banks of goods pledged to them—Whether sale on behalf of pledger—Liability to sales tax—Turn-over representing sales of goods effected by a bank with whom an assessee has pledged the goods is liable to be included in the assessee's turnover. The bank in selling the goods pawned to it does not act as agent of the assessee but the sales are nevertheless on behalf of the pledger, for the pawn or pledge by itself does not make the pawnee or pledgee the owner of the goods. The very concept of pledge carries with it the elements of custody and power to sell the goods in default of payment.—DEPUTY COMMISSIONER OF COMMERCIAL TAXES, MADURAI DIVISION, MADURAI v. A. R. S. THIRUMENINATHA NADAR FIRM, TUTICORIN [1968] 21 S.T.C. 184 (Mad.).

BANARSI CLOTH

Rate of tax (Bombay).—The words "all silk goods" in item 7 of Schedule I to the Bombay Sales Tax Act, 1946, prior to its amendment by Bombay Act No. I of 1949 cover only goods made wholly and purely of silk. In any case, there is an ambiguity about the meaning of the words used in item No. 7 and being a taxing statute, the duty of the Court is to give the benefit of reasonable doubt to the subject. Bombay Act No. I of 1949 cannot be treated as retrospective and therefore in respect of the period of assessment 1st July, 1947, to the 30th June, 1948, *Banarsi* cloth is subject to the general tax of half anna in the rupee and not to the special tax.—*LALCHAND GOPALJI v. THE STATE OF BOMBAY* [1952] 3 S.T.C. 102.

BARTER

Finished article given to purchaser in exchange for silver and making charges.—In the case of a sale under the Sale of Goods Act, 1930, it is an essential requisite that the consideration should be money. But in order to bring a transaction within the ambit of the term as defined in the Madras General Sales Tax Act money alone need not necessarily be the consideration. Where a

dealer in silver transferred to a purchaser the property in a finished silver article in exchange for an equivalent weight in silver along with a sum of money equal to the manufacturing or making charges, the sale becomes complete because the consideration for the sale is cash plus the quantity of silver. Such a transaction is a sale within the meaning of the term in the General Sales Tax Act since the material in the silver received by the dealer is a valuable metal. The transaction is not a barter. GOVINDA MENON, J., said:—"I am next asked to say that the transaction in question is a barter and not a sale. The word 'barter' is defined in Wharton's Law Lexicon, p. 99, as 'to exchange one commodity for another.' I very much doubt whether the exchange of a finished silver article for an equivalent weight of silver along with the making charges is the exchanging of one commodity for another. No authority has been brought to my notice where the word has been understood in that light. In the Oxford Dictionary the word is defined as 'the computation of the quantity or value of one commodity to be given for a known quantity and value of another.' This shows that 'barter' implies the reciprocal transfer of different commodities, e.g., if the petitioner received as consideration for the sale of his silver articles any article made of a different metal, it will amount to a barter; but not in a case where the same commodity in a different form is exchanged". —JAYARAMA CHETTIAR, *In re* [1948] 1 S.T.C. 168 (Mad.).

Barter or exchange—"Other valuable consideration" in definition of "sale"—**Meaning of.**—The definition of "sale" in the U.P. Sales Tax Act, 1948, must be construed in the sense which it has in the Sale of Goods Act, 1930. The words "other valuable consideration" in section 2(h) of the U.P. Sales Tax Act, 1948, must be interpreted on the basis of the rule of *ejusdem generis* to mean cheques, bills of exchange or any such other negotiable instruments. They cannot cover a case where no price is paid and the transaction is merely one of exchange or barter. Therefore the giving of bullion and making charges by a dealer in bullion and ornaments in exchange for ready-made ornaments manufactured by goldsmiths is not a "sale of bullion" within the meaning of the U.P. Sales Tax Act, 1948, but is only a barter or exchange transaction and therefore not liable to be taxed.—SALES TAX COMMISSIONER, U.P. v. RAM KUMAR AGARWAL [1967] 19 S.T.C. 400 (All.).

BENGAL FINANCE (SALES TAX) ACT

Bengal Finance (Sales Tax) Act (VI of 1941)—**Bullion and specie**—Act imposing tax—No

recommendation from Governor under Article 207—Subsequent assent of Governor—Validity of Act—Bengal Finance (Sales Tax) (Second Amendment) Act, 1955—Constitution of India, Articles 207, 255.—BALAI CHAND SEAL v. K.M. CHAKRAVARTI AND OTHERS [1966] 17 S.T.C. 300.

—**Camphor**—Whether drug—Making of camphor cubes from camphor powder—Whether a process—West Bengal Sales Tax Act (IV of 1954).—SRI OM PRAKAS GUPTA v. COMMISSIONER OF COMMERCIAL TAXES AND OTHERS [1965] 16 S.T.C. 935.

—**Company**—Winding up—Sales tax—When becomes due and payable—Whether entitled to preferential payment—Indian Companies Act (VII of 1913), Sec. 230 (1) (a), (5)(a).—RECOLS (INDIA) LTD., *In re* [1953] 4 S.T.C. 271.

—**Purchasing agent**—Import of tin for Government on commission basis—Liability to sales tax—Contract with Director-General of Supplies—Goods used by railways and payments made by railways—Whether sales to railway administration—Whether exempt from tax.—MATHURADAS GOVARDHANDAS v. STATE OF WEST BENGAL [1956] 7 S.T.C. 490.

—**Sale in the course of export**—Colliery Control Order, 1945—Sale of coal to parties outside India—Whether a sale in the course of export—Whether entitled to exemption under Article 286(1)(b)—When *certiorari* and *mandamus* will lie—Constitution of India, Articles 226, 286(1)(b).—SUNIL KUMAR ROY v. COMMERCIAL TAX OFFICER AND ANOTHER (No. 1) [1959] 10 S.T.C. 14.

—See also Sec. 5 (2)(a)(v).

—**Sales tax**—Whether a tax on the sale of goods or on the commodity sold.—TATA AIRCRAFT LIMITED v. MEMBER, BOARD OF REVENUE, WEST BENGAL [1962] 13 S.T.C. 388.

—**Sales tax**—Certain description of soaps—Whether exempt under Bengal Finance (Sales Tax) Act, 1941, but liable to tax under West Bengal Sales Tax Act, 1954—Scope of Notification No. 2346 F.T. dated 1st December, 1954.—BENOY KRISHNA BOSE v. COMMERCIAL TAX OFFICER AND OTHERS [1966] 17 S.T.C. 35.

—**Sale of goods**—Sales outside State—Scope of Explanation to Article 286(1)—Company manufacturing railway wagons inside State of West Bengal—Acceptance of order, delivery of wagons to buyer and payments inside State—Wagons consumed by railway outside State—Levy of sales tax by State of West Bengal—Legality—Whether levy prohibited by Article 286(1)(a) read with Explanation.—INDIAN STANDARD WAGON CO., LTD. v. COMMERCIAL TAX OFFICER AND OTHERS [1960] 11 S.T.C. 47 affirming 9 S.T.C. 553.

—Sale outside State—Explanation sale—Contract should provide for delivery outside State—Mere transportation of goods outside State by buyer not sufficient to entitle exemption—Constitution of India [prior to its amendment by Constitution (Sixth Amendment) Act, 1956], Article 286(1)(a).—JEEWANLAL (1929) LTD. v. COMMERCIAL TAX OFFICER AND OTHERS [1965] 16 S.T.C. 478 affirmed in 20 S.T.C. 345.

—Snuff—Whether tobacco—Whether liable to sales tax—Declared goods—Rate of tax—Bengal Sales Tax Rules, 1941, Rule 3(28)—Additional Duties of Excise (Goods of Special Importance) Act, 1957.—SM. PARUL LATA CHAKRAVARTY v. COMMERCIAL TAX OFFICER AND OTHERS [1966] 17 S.T.C. 116.

—Writs under Constitution—When *certiorari* could issue—Sale in the course of export—Question not raised before Sales Tax Officer—Power of High Court to consider question and issue writ—Constitution of India, Articles 226, 286.—BANWARILAL & Co. (PRIVATE) LTD. v. COMMERCIAL TAX OFFICER AND OTHERS [1959] 10 S.T.C. 68.

—Secs. 2 (b), (d), (g), (h) and 26(1)—Building contracts—Imposition of sales tax on supply of building materials—Provisions, whether *ultra vires* Legislature—Nature of such contracts—Scope of entry 48 in Government of India Act, 1935, and entry 54 of Constitution of India—Interpretation of expressions—Government of India Act, 1935, Section 100, Schedule VII, List II, entry 48—Constitution of India, Schedule VII, List II, entry 54—Bengal Sales Tax Rules, 1941, Rule 2.—DUKHINESWAR SARKAR & BROS., LTD. v. COMMERCIAL TAX OFFICER AND OTHERS [1957] 8 S.T.C. 478.

—High Court—Sales Tax Authorities—Building contracts—Decision of High Court declaring provision *ultra vires* the Constitution—Appeal to Supreme Court against decision—Jurisdiction of authorities to make assessment under that provision pending decision—Bengal Sales Tax Rules, 1941, Rule 2(2)—Constitution of India, Article 227.—DINESH CHANDRA BHATTACHARYYA AND OTHERS v. MEMBER, BOARD OF REVENUE, WEST BENGAL, AND OTHERS [1967] 19 S.T.C. 224.

—Sec. 2 (b) (i), (ii) and (iii)—Watch repairer—Levy of sales tax on cleaning and supply of spare parts—Legality—Definition of “contract”—Whether can be extended to other items.—R. R. Das & Sons v. STATE OF WEST BENGAL [1955] 6 S.T.C. 111.

—Secs. 2(c) (i), 18—Auctioneer—Whether dealer—Liability to sales tax—Effect of registration as dealer—Effect of repeal of section 18—Ordinance (X of 1950).—STAYNOR & Co. v. COMMERCIAL TAX OFFICER [1951] 2 S.T.C. 111.

—Sec. 2(c), Expl. 2—Auctioneer—Whether dealer—Whether liable to sales tax—Definition of “dealer” which includes auctioneer—Validity—Whether *ultra vires* Legislature—CHOWRINGHEE SALES BUREAU LTD. v. STATE OF WEST BENGAL AND OTHERS [1961] 12 S.T.C. 535.

—Sec. 2(c)—Dealer—Carrying on business—Director of Supplies and Disposals—Whether dealer and liable to pay sales tax—DIRECTOR OF SUPPLIES AND DISPOSALS v. MEMBER, BOARD OF REVENUE, WEST BENGAL [1965] 16 S.T.C. 197 reversed in 20 S.T.C. 398.

—Sec. 2(c)—Dealer—Carrying on business—Organisation of the Government of India for disposal of war surplus left by American Government—Sale of surplus materials—Whether Director of organisation dealer and liable to sales tax.—DIRECTOR OF SUPPLIES AND DISPOSALS, CALCUTTA v. MEMBER, BOARD OF REVENUE, WEST BENGAL, CALCUTTA [1967] 20 S.T.C. 398 (S.C.).

—Sec. 2(d)—Additional evidence—Entertainment by appellate authorities—Practice and principles—Delivery order—Whether actionable claim or document of title—Transfer for valuable consideration—Whether sale of goods—Civil Procedure Code, 1908, Order 41, rule 27.—HASTINGS MILL LTD. v. STATE OF WEST BENGAL [1956] 7 S.T.C. 503.

—Sec. 2 (g), Expl. 1—Hire-purchase agreement—Sale of cars—Purchaser paying part of price—Balance paid by third party with whom purchaser entered into agreement for payment of monthly instalments together with interest—Transaction between purchaser and third party—Whether sale—Explanation 1 to section 2 (g)—Whether *ultra vires*—Board's power to decide questions.—UNION CREDIT CORPORATION LTD. v. STATE OF WEST BENGAL [1955] 6 S.T.C. 246.

—Secs. 2(g), 5(2)(a)—Company—Sales to registered dealer—Commission agent—Goods manufactured by company distributed by subsidiary company on commission basis—Moneys remitted to parent company by subsidiary company on realisation—Subsidiary company unregistered for portion of period—Liability of parent company to sales tax during that period—Transfer of goods to subsidiary company—Whether sale.—STANDARD PHARMACEUTICAL WORKS LTD. v. MEMBER, BOARD OF REVENUE, WEST BENGAL [1954] 5 S.T.C. 327.

—Secs. 2(g), 5(2)(a)(v)—Sale of goods—Export of coal—Sale in the course of export—Supply and despatch of coal by colliery owner to Pakistan in pursuance of agreement entered into between India and Pakistan—Whether transaction sale—Whether exempt under Article 286(1)(b), Constitution of India, or section 5(2)(a)(v),

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Bengal Act.—NORTH ADJAI COAL COMPANY (P.) LTD. *v.* COMMERCIAL TAX OFFICER AND OTHERS [1966] 17 S.T.C. 514.

—Secs. 2(g), 5(2)(a)(ii), 27—Export or import—Sale outside State—Export of coal—Special coal shipment programme of Government—Dealers delivering coal under orders of Government to shipping agents and export of such coal outside India—Payment of bills by shipping agents—Whether transaction sale—Whether sale in the course of export—Whether liable to be taxed—Sale of coal to railways—Delivery of coal in wagons—Where sale takes place—Constitution of India, Article 286(1)(b).—S. K. ROY *v.* ADDITIONAL MEMBER, BOARD OF REVENUE, WEST BENGAL [1966] 18 S.T.C. 379.

—Sec. 2(h)—“Sale price”, meaning of—Whether includes sales tax realised by dealer—Whether should be included in arriving at gross turnover.—BATA SHOE CO., LTD. *v.* MEMBER, BOARD OF REVENUE, WEST BENGAL [1950] 1 S.T.C. 193.

—Secs. 2(h), 27—Sales outside State—Inter-State sales—Sales Tax Laws Validation Act, 1956—Company manufacturing railway wagons inside State—Delivery at company's worksiding inside State—Wagons intended for railway outside State—Whether inter-State sales—Whether levy of tax validated by Validation Act, 1956—Sales Tax Laws Validation Act (VII of 1956)—Constitution of India, 1950, Art. 286(1)(a), (2).—INDIAN STANDARD WAGON CO., LTD. *v.* COMMERCIAL TAX OFFICER [1958] 9 S.T.C. 553 affirmed in 11 S.T.C. 47.

—Secs. 2(h), 27—Sales outside State—Inter-State sales—Whether levy of sales tax on sales falling under Explanation to Article 286(1)(a) was validated by Validation Act, 1956—Supreme Court decision on validity of Act—Point not considered or raised before it—Whether can be considered by High Court—Sales Tax Laws Validation Act (VII of 1956)—Constitution of India, 1950, Article 286 (1)(a).—ASHOKA MARKETING LTD. *v.* COMMERCIAL TAX OFFICER, CENTRAL SECTION, CALCUTTA, AND OTHERS [1958] 9 S.T.C. 624.

—Secs. 2(h), 27—Sales outside State—Inter-State sales—Whether levy of sales tax on sales falling under Explanation to Article 286(1)(a) was validated by Validation Act, 1956—Jurisdiction of High Court over Government servants of other States keeping office in Calcutta to realise taxes—Sales Tax Laws Validation Act (VII of 1956)—Constitution of India, 1950, Article 286(1)(a).—BLACKSTONE PRODUCTS LTD. *v.* THE COMMERCIAL TAX OFFICER, SHYAMBAZAR CHARGE, AND OTHERS [1958] 9 S.T.C. 796.

—Sec. 2(4)—Sale of goods—Contract of work and labour—Company carrying on business in piece-goods and tailoring—Liability of tailoring department to sales tax—“Sale”, meaning of.—INDRALAYA LTD. *v.* ADDITIONAL COMMISSIONER, COMMERCIAL TAXES, WEST BENGAL, AND OTHERS [1958] 9 S.T.C. 633.

—Secs. 3, 11, 15—Assessment—Commissioner—Delegation of power—Notice under section 11(2)—Whether Commissioner's power under section 11(2) can be delegated—Notice issued by Commercial Tax Officer under section 11(2)—Validity—Bengal Sales Tax Rules, 1941, Rule 71.—BALIHARI COLLIERY CO. LTD. *v.* COMMERCIAL TAX OFFICER AND ANOTHER [1957] 8 S.T.C. 194.

—Secs. 4, 5 & 2(c), Expls. 2, 3—Dealer—Commission agent—Assessment proceedings—Selling agent inside State for goods manufactured by mill outside State—Agent having no authority to enter into contracts on behalf of principal merely canvassing orders—Mill despatching goods direct to customers and obtaining sale price through banks—Commission agent, whether dealer—Liability to sales tax—Commercial Tax Officer making assessment on instructions and advice of superior officer obtained behind back of assessee—Legality.—MAHADAYAL PREMCHANDRA *v.* COMMERCIAL TAX OFFICER, CALCUTTA, AND ANOTHER [1958] 9 S.T.C. 428 (S.C.).

—Secs. 4, 5, 11—Assessment—Jurisdiction to assess—Transfer of case—Assessment made by Commercial Tax Officer, Central Circle—Validity—Jurisdiction to assess and liability to pay tax—Whether depend on validity of notices—Bengal Finance (Sales Tax) (Amendment) Act, 1962.—MADANLAL MAHAWAR AND OTHERS *v.* THE COMMERCIAL TAX OFFICER, CENTRAL SECTION, WEST BENGAL, AND OTHERS [1965] 16 S.T.C. 1071.

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—Secs. 4(2), 7, 11(1), (2)—Dealer—Application for registration—“Failed to get himself registered”, meaning of—Necessity to put in regular application—Reasonable time for issuing certificate—Duty of officer—Legality of assessment under section 11(2)—Scope of section 11(1) and (2)—Maintainability of application under Article 226—Bengal Sales Tax Rules, 1941,

Rules 5, 6.—BALHARSHAH TIMBER DEPOT *v.* COMMISSIONER OF COMMERCIAL TAXES AND ANOTHER [1958] 9 S.T.C. 675.

—Secs. 4, 7, 11(2)—Best judgment assessment—Law prior to amendment by Act XLVIII of 1950—Application for registration—Delay in granting registration—Best judgment assessment for not getting registered as dealer—Legality.—MANINDRA NATH GUIN *v.* STATE OF WEST BENGAL [1955] 6 S.T.C. 672.

—Secs. 4(5), 7(1)—Manufacturer—Dispensing chemist—Whether manufactures or produces goods for sale—Whether liable to register business under section 7.—NORTH BENGAL STORES LTD. *v.* MEMBER, BOARD OF REVENUE, BENGAL [1950] 1 S.T.C. 157.

—Secs. 5, 7, 20, 22, 23—Offences—Composition—Using declaration forms for purchase not covered by registration certificate—Composition of offence and validation of declaration forms by Commissioner—Legality—Review by successor-in-office declaring predecessor's order void—Validity.—AKSHOY KUMAR DEY AND CO. *v.* COMMERCIAL TAX OFFICER AND OTHERS [1966] 18 S.T.C. 505.

—Sec. 5(2)(a)(ii)—Sales to registered dealer—Purchaser untraceable—Inability to verify declaration by purchaser—Whether a ground for refusing deduction—Sales Tax Rules, Rule 27-A.—SRINIWAS JIWANRAM *v.* STATE OF WEST BENGAL [1952] 3 S.T.C. 301.

—Secs. 5(2)(a)(ii), 7(4)—Dealer—Certificate of registration—Amendment—Section 7(4)—Whether void as being repugnant to Articles 14 and 19—Writs under Article 226—Circumstances under which they can be issued—Constitution of India, Article 226.—INDIAN IRON AND STEEL CO., LTD. *v.* COMMERCIAL TAX OFFICER AND OTHERS [1957] 8 S.T.C. 517.

—Secs. 5(2)(a)(ii) and 7(4)—Certificate of registration—Manufacturing company—Ingredients of buildings in which manufactory is housed—Whether materials used in the manufacture of goods for sale—Certificate issued containing entries of such goods—Whether officer can subsequently amend by deleting entries—Sales of such goods to company—Whether tax free—“Otherwise received” in section 7(4) and “in the manufacture of goods” in section 5(2)(a)(ii)—Meanings of.—BHARTIA ELECTRIC STEEL CO., LTD. *v.* COMMERCIAL TAX OFFICER AND OTHERS [1956] 7 S.T.C. 527.

—Sec. 5(2)(a)(ii)—Deduction—Taxable turnover—Sales to registered dealer—“Used in the manufacture of goods”—Meaning of—Industrial gloves used by workmen of manufacturing

company—Whether used in the manufacture of goods.—PHELPS & CO. (PRIVATE) LTD. *v.* MEMBER, BOARD OF REVENUE, WEST BENGAL [1967] 20 S.T.C. 511.

—Sec. 5(2)(a)(ii)—Deductions—Sales to registered dealer—Declaration forms—Whether formalities and legal provisions should be strictly complied with—Omission or error in giving details—Effect—Sales made shortly before surrender of registration certificate by purchasing dealer—Whether deductible—Bengal Sales Tax Rules, 1941, Rule 27A.—SHRI ANIL KUMAR DUTTA AND OTHERS *v.* ADDITIONAL MEMBER, BOARD OF REVENUE, WEST BENGAL [1967] 20 S.T.C. 528.

—Secs. 5(2)(a)(ii), 7(4), 20(4)—Registered dealer—Certificate of registration—Amendment—“Information otherwise received”—Meaning of—Mere change of opinion—Whether certificate can be amended—Scope of section 5(2)(a)(ii)—Goods which can be mentioned in certificate—Business of manufacture and sale of patent and proprietary medicines—“Ink and paper”—Whether used in the manufacture of goods for sale.—DABUR (DR. S. K. BURMAN) PVT. LTD. *v.* COMMERCIAL TAX OFFICER, BHOWANIPORE CHARGE, AND OTHERS [1967] 19 S.T.C. 447.

—Secs. 5(2)(a)(ii), 21A—Sales to registered dealer—Exemption—Necessity to produce declaration forms—Loss of declaration forms—Whether dealers can be directed to issue duplicate forms—Whether officer can grant exemption on production of secondary evidence of issue of declaration forms—Commercial Tax Officer—Whether acts as “Court”—Constitution of India, Article 19(1)(g).—KEDAR NATH JUTE MANUFACTURING CO., LTD. *v.* COMMERCIAL TAX OFFICER AND OTHERS [1959] 10 S.T.C. 241 affirmed in 13 S.T.C. 138.

—Secs. 5(2)(a)(ii), 21A—Sales to registered dealer—Exemption—Necessity to produce declaration forms—Loss of declaration forms—Whether officer can grant exemption on production of secondary evidence of issue of declaration forms—Scope of section 21A and proviso to section 5(2)(a)(ii)—Whether provisions of proviso or rule 27A(1)(b) infringe Article 19(1)(g) of Constitution.—KEDARNATH JUTE MANUFACTURING CO., LTD. *v.* COMMERCIAL TAX OFFICER AND OTHERS [1962] 13 S.T.C. 138 affirmed in 16 S.T.C. 607.

—Secs. 5(2)(a)(ii), 21A—Exemption—Sales to registered dealer—Production of declaration forms—Strict compliance with provision—Secondary evidence—Whether permissible—Interpretation of statutes—Proviso—Bengal Sales Tax Rules, 1941, Rule 27A.—KEDARNATH JUTE MANUFACTURING CO., LTD. *v.* COMMERCIAL TAX OFFICER AND OTHERS [1965] 16 S.T.C. 607 (S.C.).

—Sec. 5(2)(a)(ii)—See also Sec. 2(g).

—Sec. 5(2)(a)(iii)—Goods supplied to Ministry of Industry and Supply prior to coming into force of Act X of 1949—Applicability of section 5(2)(a)(iii).—*SHRI GANESH JUTE MILLS LTD. v. COMMERCIAL TAX OFFICER AND OTHERS* [1952] 3 S.T.C. 175 reversed in 4 S.T.C. 298.

—Sec. 5(2)(a)(iii)—Deduction from taxable turnover—Goods supplied to Ministry of Industry and Supply—Applicability of section 5(2)(a)(iii)—Application under Article 226—Decision of Single Judge—Appeal—Maintainability—Constitution of India, 1950, Article 226—Letters Patent (Calcutta), Clause 15.—*THE COMMERCIAL TAX OFFICER AND ANOTHER v. SHREE GANESH JUTE MILL LTD.* [1953] 4 S.T.C. 298 affirmed in 7 S.T.C. 113.

—Sec. 5(2)(a)(iii)—Deduction from taxable turnover—Nature of exemption under section 5(2)(a)(iii)—Government departments—Whether distinct entities—Section 5(2)(a)(iii) exempting sales to Indian Stores Department and Supply Department—Goods supplied to Ministry of Industries and Supplies—Applicability of section 5(2)(a)(iii).—*THE UNION OF INDIA AND ANOTHER v. COMMERCIAL TAX OFFICER, WEST BENGAL, AND OTHERS* [1956] 7 S.T.C. 113 (S.C.).

—Sec. 5(2)(a)(v)—Sale in the course of export—Despatch of goods outside West Bengal—Contract of sale—Appropriation of goods to contract with Bombay parties—Subsequent shipment of goods to places outside India on behalf of Bombay parties—Whether sales exempt under section 5(2)(a)(v), Bengal Act, or Article 286(1)(b) of India, Art. 286 (1) (b).—*GORDHANDAS LALJI v. B. BANERJEE AND OTHERS* [1958] 9 S.T.C. 581 (S.C.).

—Sec. 5(2)(a)(v)—Sale of goods—Scope of section 5(2)(a)(v)—Sale in Bihar and goods brought into West Bengal by purchasers—Whether sale liable to tax.—*SUNIL KUMAR ROY v. COMMERCIAL TAX OFFICER AND ANOTHER (No. 2)* [1959] 10 S.T.C. 18.

—Sec. 5(2)(a)(v)—Sales tax—Deductions—Despatch of goods outside West Bengal—Merger of Cooch Behar with West Bengal but extension of Act to that area on a later date—Despatch of goods to Cooch Behar after merger but before extension of Act—Whether allowable deduction under section 5(2)(a)(v), Bengal Finance (Sales Tax) Act (6 of 1941).—*BIRI TRADING CO. v. MEMBER, BOARD OF REVENUE, WEST BENGAL* [1968] 21 S.T.C. 169.

—Secs. 5(2)(a)(v), 27—Inter-State sales—“Occasions the movement of goods” meaning of—

Contract of sale must contemplate movement of goods—Mere transportation of goods outside State by buyer is not sufficient—Central Sales Tax Act (74 of 1956), Sec. 3—*JEEWANLAL (1929) LTD. v. COMMERCIAL TAX OFFICER, LYONS RANGE CHARGE, AND OTHERS* [1967] 20 S.T.C. 345.

—Sec. 5(2)(a)(v)—See also Sec. 2(g).

—Sec. 7—Registered dealer—Certificate of registration—Cancellation—Dealer ceasing to carry on business at place mentioned in application—Whether certificate should be cancelled—“Shall” in section 7 (6) (a), meaning of—Reasonable opportunity should be given before cancellation.—*SAHA STORES v. COMMERCIAL TAX OFFICER AND ANOTHER* [1959] 10 S.T.C. 311.

—Secs. 7(1), 22(1)(a)—Company—Carrying on business as dealer in contravention of sec. 7(1)—Liability of shareholder.—*RAMESWAR AGARWALLA v. THE STATE* [1955] 6 S.T.C. 397.

—Secs. 7(4), 16.—See *MERCHANT AND TRADERS, (PRIVATE) LTD. v. STATE OF WEST BENGAL AND ANOTHER* [1963] 14 S.T.C. 798.

—Secs. 7 (4a), 11 (4a)—Dealer—Application for registration—Section 7(4a) conferring power on Commissioner to demand reasonable security—Whether contravenes Article 19(1)(g)—Whether *ultra vires* Legislature—“Payable” in section 7(4a), meaning of—Enquiry under rule 6—Nature of—Whether violates rules of natural justice—Bengal Sales Tax Rules, 1941, Rule 6.—*DURGA PRASAD KHAITAN v. COMMERCIAL TAX OFFICER AND OTHERS* [1957] 8 S.T.C. 105.

—Sec. 7—See also Secs. 4, 5.

—Secs. 10, 11—Failure to submit return—Failure to produce accounts and evidence in response to notice—Best judgment assessment—Whether assessment was proper—Whether High Court has jurisdiction to revise assessment.—*JAGADISH PRASAD PANNALAL v. MEMBER, BOARD OF REVENUE, WEST BENGAL* [1951] 2 S.T.C. 21.

—Sec. 10(2), prov.—Return period—Average taxable turnover not exceeding 10% of average gross turnover—Right to send annual return—Absence of order amending return period—Effect.—*CHUNILAL HEMRAJ v. STATE OF WEST BENGAL* [1955] 6 S.T.C. 68.

—Secs. 10(3), (4), 11—Best judgment assessment—“No return”—Return furnished without prepayment of admitted amount of tax—Issue of notice in Form VI(a) and assessment under section 11—Legality.—*KHAS KAJORA COAL CO., LIMITED v. MEMBER, BOARD OF REVENUE, WEST BENGAL* [1966] 18 S.T.C. 79.

—Sec. 11—Right of hearing—Reasonable opportunity must be given by officer who makes assessment.—*DALMIYA AND Co. v. THE STATE OF WEST BENGAL* [1952] 3 S.T.C. 443.

—Sec. 11—Board of Revenue—Power of review—Limitation—Assistant Commissioner—Jurisdiction to make assessment—Bengal Sales Tax Rules, 1941, Rule 7—Bengal Board of Revenue Act, 1913, Section 6(1), (2).—*CALCUTTA TANNERIES (1944) LTD. v. THE STATE OF WEST BENGAL* [1952] 3 S.T.C. 105.

—Sec. 11(2)—Best judgment assessment—Nature of proceedings—Duty of officer—Proceedings under section 11 (2), Bengal Act—Assessment order made on assessee's failure to appear on date fixed for hearing—Order only referring to conclusions previously made by officer during investigation—Legality.—*GEM & Co. v. STATE OF WEST BENGAL AND OTHERS* [1959] 10 S.T.C. 537.

—Sec. 11—Best judgment assessment—Principles stated—Whether assessment is valid—Whether there is denial of opportunity of being heard—Imposition of penalty—Whether legal and valid.—*RAMDHARI SAHA v. STATE OF WEST BENGAL* [1966] 17 S.T.C. 215.

—Sec. 11—Arrears of sales tax—Recovery—Business within the Presidency town of Calcutta—Certificate Officer of District 24-Parganas—Whether has jurisdiction to issue certificate.—*CHANDI CHARAN LAHA v. CERTIFICATE OFFICER, 24-PARGANAS, AND OTHERS* [1967] 19 S.T.C. 526.

—Sec. 11(4-B)—Commissioner—Delegation of power—Assessment and imposition of penalty—Amendment of section after delegation—Whether fresh delegation necessary—Bengal Sales Tax Rules, 1941, Rule 71.—*HIND ASSOCIATED CORPORATION PRIVATE LTD. v. STATE OF WEST BENGAL AND OTHERS* [1966] 17 S.T.C. 414.

—Sec. 11—See also Secs. 3, 4, 7, 10.

—Secs. 15, 17, 18—Limited company taking over business of proprietary concern—Assets and liabilities of proprietor excluded—Whether company transferee and "dealer"—Taxing authorities sending notice to produce account books—Application under Article 226 for quashing requisition—Maintainability—Ordinance X of 1950.—*MAJOR SOAP Co., LTD. v. ASSISTANT COMMISSIONER OF COMMERCIAL TAXES, CALCUTTA* [1952] 3 S.T.C. 444.

—Sec. 15—See also Sec. 3.

—Sec. 17—Transfer of business—Liability of transferor in respect of periods before transfer—Whether transferee alone liable.—*KSHITISH CHANDRA SARBAJNA v. THE STATE OF WEST BENGAL AND OTHERS* [1967] 20 S.T.C. 42.

—Sec. 17—See also Section 15 and *BIBHAS CHANDRA GON AND OTHERS v. THE STATE OF WEST BENGAL AND ANOTHER* [1964] 15 S.T.C. 277.

—Sec. 18—See Secs. 2 (c) (i), 15.

—Sec. 20(1), (3)—Appeal and revision under section 20—Whether lies against a revised assessment—Amendment made to section 20 (3) by Act XLVIII of 1950—Whether retrospective—Whether confers power to revise for any prior period—Service of notices—Whether authorities bound to send notices of adjournment—Bengal Finance (Sales Tax) (West Bengal Amendment) Act (XLVIII of 1950).—*NAGENDRA NATH SHAH v. THE STATE OF WEST BENGAL AND OTHERS* [1957] 8 S.T.C. 641.

—Sec. 20—See Secs. 4, 5, and Schedule.

—Sec. 21—See *DURGA SREE STORES v. BOARD OF REVENUE* [1964] 15 S.T.C. 186.

—Sec. 21(1), (2)—Reference—Application to Board of Revenue for reference—Limitation—Time requisite for obtaining copy of order against which reference is sought—Whether can be excluded—"Passing of order", meaning of—When time begins to run.—*DIRECTOR OF SUPPLIES AND DISPOSALS, CALCUTTA v. MEMBER, BOARD OF REVENUE, GOVERNMENT OF WEST BENGAL* [1960] 11 S.T.C. 589.

—Sec. 21 (3) — Reference — Application for directing Board of Revenue to state case—Judge sitting on Original Side to whom matter has been assigned—Whether High Court—Jurisdiction to hear application—Limitation—Time requisite for obtaining copy of order of Board of Revenue—Whether should be excluded.—*INDIA ICE & COLD STORAGE Co. LTD. v. MEMBER, BOARD OF REVENUE, WEST BENGAL* [1950] 1 S.T.C. 191.

—Sec. 21A—See Sec. 5(2)(a) (ii).

—Sec. 22—See Secs. 5, 7.

—Sec. 23—See Sec. 5.

—Sec. 25—Sales tax proceedings—Confidential nature—Power of court to issue summons—Documents entitled to protection against disclosure.—*JYOTIRMOY GHOSH AND OTHERS v. THE STATE OF WEST BENGAL* [1967] 19 S.T.C. 343.

—Sec. 25(1), (3)—Sales tax proceedings—Confidential nature—Power of court to issue summons to produce documents for purpose of prosecution under Indian Penal Code—Nature of such power.—*S.K. BOSE, COMMISSIONER OF COMMERCIAL TAXES, WEST BENGAL v. THE STATE OF WEST BENGAL* [1966] 18 S.T.C. 429.

—Sec. 26(1)—See Sec. 2 (b).

—Sec. 27.—See Secs. 2(g), (h), 5 (2)(a)(v).

—Sch., items 3, 7—Exemption—Biscuits—Whether exempt from sales tax.—*DIAMOND BISCUIT CO. v. STATE OF WEST BENGAL* [1955] 6 S.T.C. 110.

—Sch., item 6—Exemption—Pan or betel leaf—Whether vegetable and exempt from taxation—“Vegetables”, meaning of.—*DHARMADAS PAUL v. COMMISSIONER OF COMMERCIAL TAXES, WEST BENGAL, AND ANOTHER* [1958] 9 S.T.C. 194.

—Sch., item 6—Vegetables—Green ginger—Whether vegetable and exempt under item 6 of Schedule to Bengal Finance (Sales Tax) Act (6 of 1941).—*WAZI AHMED v. STATE OF WEST BENGAL AND OTHERS* [1967] 20 S.T.C. 254.

—Sch., item 7—Exemption—“Chhana”—Whether cooked food and exempt from sales tax.—*SANTOSH KUMAR GHOSH v. COMMERCIAL TAX OFFICER AND OTHERS* [1965] 16 S.T.C. 931.

—Sch., item 16, Sec. 20—Exemption of handloom woven cloth—Whether extends to such cloth when subjected to needle work and has its value increased—Scope of exemption—Revision by Board of Revenue—Dismissal of application without hearing petitioner—Legality.—*ISHWAR DAS KAPOOR & SONS v. MEMBER, BOARD OF REVENUE, BENGAL* [1950] 1 S.T.C. 153.

—Sch., item 18—“Tobacco for hooka” meaning of.—*SRI SHIB NATH HAZRA v. STATE OF WEST BENGAL* [1952] 3 S.T.C. 214.

Bengal Finance (Sales Tax) (Second Amendment) Act, 1955—Validity.—Though there was no recommendation from the Governor for the imposition of tax on bullion and specie under the Bengal Finance (Sales Tax) (Second Amendment) Act, 1955, as the assent of the Governor to the Amendment Act was published in the Calcutta Gazette, Extraordinary, on 19th September, 1955, the defect under Article 207 of the Constitution was cured and the Amendment Act could not be said to be an invalid piece of legislation. *Gauri Shankar v. Municipal Board, Jhunjhunu* (A.I.R. 1958 Raj. 192) relied on.—*BALAI CHAND SEAL v. K. M. CHAKRAVARTI AND OTHERS* [1966] 17 S.T.C. 300 (Cal.).

Bengal Finance (Sales Tax) Act, 1941, as extended to Delhi—Writs under Constitution—Application under Article 226 before exhausting remedies under Sales Tax Act—Maintainability—Liability of transferee company for additional sales tax payable by transferor company.—*ALLA UDIN & Co. v. SALES TAX OFFICER AND ANOTHER* [1959] 10 S.T.C. 45.

—Sec. 2(b), (d), (g), (h), (i)—Sale of goods—Building contracts—Part C States—Provisions of Bengal Finance (Sales Tax) Act, 1941, imposing tax on building contracts—Bengal Act extended to Delhi by notification—Validity of provisions imposing tax on supply of building materials—Legality of procedure extending Bengal Act to Delhi—Scope of section 2, Part C States (Laws) Act, 1950—Constitution of India, Articles 246, 248, Sch. VII, List II, entry 54—Part C States (Laws) Act (XXX of 1950), Sec. 2.—*MITHAN LAL AND OTHERS v. THE STATE OF DELHI AND OTHERS* [1958] 9 S.T.C. 417 (S.C.).

—Sec. 2(g), Expl. 1—Hire-purchase agreement—Levy of sales tax—Legality—“Sale”, meaning of—Validity of Explanation 1 to section 2(g)—Maintainability of petition under Article 226—Constitution of India, Art. 226.—*THE INSTALMENT SUPPLY LIMITED v. STATE OF DELHI AND OTHERS* [1956] 7 S.T.C. 586.

—Sec. 2(g), Expl. 1—Part C States—State of Delhi—Hire-purchase agreement—Levy of sales tax—Legality—High Court holding that Legislature not competent to enlarge meaning of words “sale of goods”—Settlement between department and assesses and issue of instructions to officers in accordance with decision—Subsequent decision of Supreme Court that Legislature competent to enlarge meaning—Effect—Issue of fresh instructions to officers to assess hire-purchase transactions—Legality—Estoppel, *res judicata*—Applicability—Validity of Explanation 1 to section 2(g), Delhi Act—Whether unconstitutional—Whether infringes Article 14, Constitution.—*INSTALMENT SUPPLY (PRIVATE) LTD. AND ANOTHER v. THE UNION OF INDIA AND OTHERS* [1961] 12 S.T.C. 489 (S.C.).

—Secs. 2(g), Expl., 27.—See *MARTIN BURN LIMITED v. THE STATE* [1964] 15 S.T.C. 294.

—Sec. 8A—Dealer—Application for registration certificate—Section conferring power on Commissioner to demand reasonable security—Whether constitutionally valid.—*NAND LAL RAJ KISHAN v. COMMISSIONER OF SALES TAX, DELHI, AND ANOTHER* [1961] 12 S.T.C. 324 (S.C.).

—Secs. 14(3), 15—Sales Tax Authorities—Power of Commissioner to seize accounts—Delegation to Sales Tax Officer and seizure by officer after obtaining sanction of Commissioner—Whether proper—Information that dealer is manipulating accounts—Whether sufficient to take action under section 14(3)—Retention of books for more than 21 days—Sanction of Commissioner obtained only after lapse of 21 days

—Legality of retention.—*ROSHAN LAL v. COMMISSIONER OF SALES TAX AND ANOTHER* [1959] 10 S.T.C. 318.

Bengal Motor Spirit Sales Taxation Act (V of 1951)—Aviation spirit—Sale outside State—Sale in the course of export—Aviation spirit supplied at aerodrome to aircraft bound for foreign destinations—Whether taxable—Whether entitled to exemption under Article 286(1)(a) or (b)—Constitution of India, Article 286(1)(a), (b)—Bengal Motor Spirit Sales Taxation (Second Amendment) Act (XXXII of 1954), Sec. 2(a)(i).—*BURMAH SHELL OIL STORAGE AND DISTRIBUTING COMPANY OF INDIA LTD. v. COMMERCIAL TAX OFFICER AND ANOTHER* [1957] 8 S.T.C. 142 affirmed by Supreme Court see below.

—Aviation spirit—Sale outside State—Sale in the course of export—Aviation spirit supplied at aerodrome to aircraft bound for foreign countries—Whether taxable—Whether entitled to exemption under Article 286(1)(a) or (b), Constitution of India—Scope of Explanation to Article 286(1)(a) and (b).—*BURMAH SHELL OIL STORAGE AND DISTRIBUTING CO., OF INDIA LTD. AND ANOTHER v. COMMERCIAL TAX OFFICER AND OTHERS* [1960] 11 S.T.C. 764 (S.C.).

BEST JUDGMENT ASSESSMENT

Principles stated.—In making a best judgment assessment under section 11 of the Bengal Finance (Sales Tax) Act, 1941, the Tax Officer must not act dishonestly, or vindictively or capriciously because he must exercise judgment in the matter. He must make what he honestly believes to be a fair estimate of the proper figure of assessment, and for this purpose he must be able to take into consideration local knowledge and repute in regard to assessee's circumstances, and his own knowledge of previous returns by and assessments of the assessee, and all other matters which, he thinks, will assist him in arriving at a fair and proper estimate; and though there must necessarily be guess-work in the matter, it must be honest guess-work. There is no justification for holding that an assessment made by an officer without conducting a local inquiry and without recording the details and results of that inquiry cannot have been made to the best of his judgment within the meaning of the section: *Held*, on the facts of the case, that in making the best judgment assessment, the authorities considered all available materials and applied their mind and tried their best to come to a correct conclusion and therefore the High Court had no jurisdiction to revise the assessment. *Income-tax Commissioner v. Badridas Ramrai Shop, Akola*

[1937] (5 I.T.R. 170) applied.—*JAGADISH PRASAD PANNALAL v. MEMBER, BOARD OF REVENUE, WEST BENGAL* [1951] 2 S.T.C. 21 (Cal.).

—An assessee who has “not chosen to state an account so that the amount of profits may be strictly determined cannot complain if a random assessment is made” upon him by the Crown. *Macpherson v. Moore* [1912] 6 Tax Cas. 107 at p. 114 quoted with approval in *DOMA SAHU KISHUN LAL v. STATE OF BIHAR* [1951] 2 S.T.C. 37 (Pat.) at p. 43.

—“If an assessee produces fabricated registers or refuses to produce genuine material upon which an assessment can be made, is he for that reason to escape assessment altogether? Certainly not. As observed by Lord Mackenzie in *Macpherson v. Moore* [1912] 6 Tax Cas. 107 at p. 115 ‘with regard to the practical difficulty of finding out the amount of profits upon which the assessment is to be laid, I can only say this, that it is not necessary to arrive at any satisfactory conclusion upon the matter, because it is not a matter with which the Court is concerned. If the Act of Parliament says the amount of profits is to be ascertained, ascertained they must be whether that can be done in a satisfactory method or not’: RAMASWAMI, J., in *DOMA SAHU KISHUN LAL SAU v. STATE OF BIHAR* [1951] 2 S.T.C. 37 at p. 43 (Pat.). See also [1952] 3 S.T.C. 65.

—*Ex hypothesi* an assessment made under section 13(4) of the Bihar Sales Tax Act, 1947, must be based on inadequate material; but that does not authorise the Sales Tax Officer to make assessment capriciously or without any regard to available material. An assessment made under section 13(4) is assessment to the *best of his judgment* and the word “judgment” implies and connotes a fair and reasonable consideration of the material which is available to the Sales Tax Officer. The question whether a firm is a bogus firm merely created by the assessee-firm for the purpose of evasion of sales tax is primarily a question of fact. [*Held*, on the facts of the case, that the finding of the Sales Tax Authorities that a firm was a bogus firm created by the assessee-firm for the purpose of evasion of sales tax was supported by sufficient material, that the addition of a certain sum to the turnover on account of the sale of cloth was based on proper material and that the addition made on account of the sale of foodgrain was not supported by any material.] *Income-tax Commissioner v. Badridas Ramrai Shop* [1937] (5 I.T.R. 170) referred to.—*BHIMRAJ NAGARMAL v. STATE OF BIHAR* [1954] 5 S.T.C. 312 (Pat.).

—When no return is submitted by an assessee the assessment has to be made by the officer to the best of his judgment and in making such assessment there must necessarily be guess-work, which must be honest guess-work. Such an assessment has to be made upon inadequate materials and the assessing officer alone has to determine the amount of assessment and the sum payable. It is a pure question of fact of which the officer has been made the sole judge. He is compelled to draw inferences and to consider materials which would not be justified by the Evidence Act.—*GREAT INDIA RICE AND OIL MILLS v. STATE OF BIHAR* [1957] 8 S.T.C. 341 (Pat.).

—*Nature of enquiry*.—The enquiry which the Sales Tax Officer may consider necessary to make for the purpose of determining the turnover of the dealer to the best of his judgment is not a judicial enquiry in which the dealer is entitled to participate and at which he has the right to be heard. The dealer is required to furnish a full and correct return and he is entitled to an opportunity of proving that his return is a proper one. If he fails to satisfy the assessing authority that this is so he, in effect, drops out of the picture and it is then for that authority to make an assessment according to his best judgment in accordance with the principles laid down in *Commissioner of Income-tax, C.P. v. Badridas Ramrai Shop, Akola* [1937] (5 I.T.R. 170).—*ADARSH BHANDAR v. SALES TAX OFFICER, ALIGARH* [1957] 8 S.T.C. 666 (All.).

—*Principles stated*—*Scope of rule 8, Turnover and Assessment Rules, and rule 30, General Sales Tax Rules*.—Under rule 8 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, there must be an enquiry and on such enquiry the authority must determine the turnover of the dealer to the best of his judgment. The determination provided under that rule cannot be mere guess-work. There must be some material before the assessing authority which must furnish the basis for the estimation of the profit. If the estimate of the profit is made on the basis of the profit earned by similar trades, similarly situated and circumstanced, then it is the duty of the assessing authority to intimate the assessee that the profit earned in trades, similarly situated and circumstanced, is so much and give notice to the assessee why his profit should not similarly be estimated. Such an intimation is not prohibited by rule 30 of the Madras General Sales Tax Rules, 1939. What all is prohibited under rule 30 is the disclosure contained in a statement in the course of any proceeding or any record of any proceeding relating to the recovery of a demand, prepared for the purpose of the Act or the rules made

thereunder. The assessment order is not the record of the assessee. There is no prohibition in rule 30 against the disclosure of the ultimate order of assessment made on other assessees. *Held*, on the facts of the case, that both the assessing authority and the Tribunal in estimating the gross profit rate on sales did not act on any material but acted on pure surmise.—*MADUPALLI ANJANEYULU & Co., ELURU v. STATE OF ANDHRA* [1956] 7 S.T.C. 151 (Andh.).

—When an assessee does not place the material on which the officer could make a proper assessment he could take steps to procure the material and proceed in the manner specified in the rules. Although no standard is laid down in these rules as to the quantity or quality of this material, that does not enable the officer to act capriciously or freakishly. A mere suspicion that the return is incorrect is not sufficient to enable the assessing authority to proceed under rule 9. He must have reason to believe that the return is incorrect or incomplete which in its turn should be based upon some material or information and the estimate of the turnover should be based upon the material gathered by him. The phrase “to the best of his judgment” implies a consideration of something that is before him. In other words, he should exercise his judgment but it should not be the result of pure guess-work. To some extent it is guess-work but it should be honest guess-work. The material on which the officer could act might not be acceptable as evidence by a court of law and the sufficiency or otherwise of it does not fall to be decided by a court of law. Although the remarks of the Judicial Committee of the Privy Council in *Commissioner of Income-tax, United and Central Provinces v. Badridas* [1937] (5 I.T.R. 170; I.L.R. 1937 Nag. 191) were made with reference to section 23 of the Indian Income-tax Act, 1922, they apply with equal force to cases arising under the Sales Tax Act inasmuch as the language of rules 8 and 9 of the Turnover and Assessment Rules is analogous to the relevant provisions of the Indian Income-tax Act. There is no obligation on the part of the assessing authorities to place before the defaulting assessee the records they had obtained from third parties. All that is demanded by natural justice is that the attention of the assessee should be drawn to the material which shows that the return submitted by the assessee is incorrect or incomplete. The power to make private enquiries is implicit in rule 8 and the taxing officer is under no obligation to supply the assessee with copies of confidential statements. Nor could the assessee demand that the informant should be examined in his presence and opportunity given to him to cross-examine the informant. Rule 9 of

the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, enables the assessing authority to call upon an assessee to produce not only his account books in the ordinary and popular sense but all the records referred to in rule 11 of the Madras General Sales Tax Rules, 1939. When the taxing officer has reason to doubt the genuineness of the accounts and the correctness of the returns the burden is on the assessee to satisfy him in this matter. For this purpose the assessee can call in aid the records mentioned in rule 11. When holding an enquiry the officer is not a court within the meaning of that word. There is no justification for the view that in one and the same notice the dealer should be called upon to produce his accounts and prove the correctness and completeness of his return. The issue of two notices, one for the production of accounts and another to establish the correctness and completeness of his return, is not forbidden by rule 9. There is sufficient compliance with that rule if two separate notices are served for that purpose.—*MADUGULA PAPAYYA AND OTHERS v. PROVINCE OF MADRAS* [1956] 7 S.T.C. 180 (Andh.).

—*Scope of rule 8, Madras General Sales Tax (Turnover and Assessment) Rules, 1939.*—If the estimate of profits is made on the basis of profit earned by similar trades, similarly situated and circumstanced, then it is the duty of the assessing authority to intimate the assessee that the profit earned in trades similarly situated and circumstanced is so much and give an opportunity to the assessee to show cause why his profit should not similarly be estimated. Rule 8 of the Turnover and Assessment Rules makes it obligatory on the assessing authority to make an enquiry to determine the turnover of the dealer to the best of his judgment. Where the orders passed by the Sales Tax Authorities did not disclose the existence of any material before the assessing authority which furnished the basis for the estimate of the profits the orders were liable to be set aside.—*VUDDAGIRI KANAKARAJU AND SONS v. THE ANDHRA STATE* [1956] 7 S.T.C. 442 (Andh.).

—*Necessity for reasonable nexus to available material—Principles stated—Capricious assessment without regard for available material not permissible.*—Under section 12(2)(b) of the Travancore-Cochin General Sales Tax Act, 1125 M.E., power is conferred on the assessing authority in the circumstances mentioned thereunder to assess the dealer to the best of his judgment. The limits of the power are implicit in the expression “best of his judgment”. Judgment is a faculty to decide matters with wisdom truly and legally. Judgment does

not depend upon the arbitrary caprice of a judge, but on settled and invariable principles of justice. Though there is an element of guess-work in a best judgment assessment, it shall not be a wild one, but shall have a reasonable nexus to the available material and the circumstances of each case. Though sub-section (2) of section 12 of the Act provides for a summary method because of the default of the assessee, it does not enable the assessing authority to function capriciously without regard for the available material. The respondent had two offices, both in Kozhikode, the head office doing retail business, and a branch office doing wholesale business, each maintaining separate accounts. The head office maintained accounts disclosing goods transferred by the branch office as well as goods purchased by it locally. The branch office had also transactions with its customers. For the assessment year 1955-56 the respondent was assessed to sales tax on the turnover disclosed by its regular books. Thereafter on a surprise inspection of the head office some secret books of account and records were discovered disclosing additional transactions to the extent of 135 per cent. of the turnover recorded in the books. The Sales Tax Officer made a reassessment by adding 135 per cent. of the turnover of the head office disclosed in the regular books of the office. He then applied the same percentage in regard to the assessment of the turnover of the branch. Similarly for the assessment year 1956-57 the Sales Tax Officer added to the turnover of the head office 200 per cent. in regard to general goods and 500 per cent. in regard to sugar on the basis of secret books discovered there, and, though no secret books were discovered in respect of the branch office, made a similar addition in respect of the turnover of the branch office as well: *Held*, on the facts, that from the discovery of the secret accounts in the head office it did not necessarily follow that a corresponding set of secret accounts were maintained in the branch office. However, if secret accounts were maintained in the branch office, that might lead only to an inference that the accounts disclosed did not comprehend all the transactions of the branch office, but that did not establish or even probabilise the finding that 135 per cent. or 200 per cent. or 500 per cent. of the disclosed turnover of the branch office was suppressed. That could have been ascertained only from other materials. The assessments were arbitrarily made applying a ratio between disclosed and concealed turnover in one shop to another shop of the respondent. It was only a capricious surmise unsupported by any relevant material and the assessments could not be sustained. Decision of the Kerala High

Court affirmed. *Commissioner of Income-tax v. Laxminarain Badridas* [1937] (5 I.T.R. 170) (P.C.) followed.—*THE STATE OF KERALA v. C. VELUKUTTY* [1966] 17 S.T.C. 465 (S.C.).

—*Principles stated—Whether assessment has been made according to law.*—If a Revenue Officer is to make an assessment to the best of his judgment, against an assessee who is in default as regards supplying information, he must not act dishonestly, or vindictively or capriciously, because he must exercise his judgment in the matter. He must make what he honestly believes to be a fair estimate of the proper figure of assessment and for this purpose he may take into consideration local knowledge and repute in regard to the assessee's circumstances and his own knowledge of the previous returns by and the assessments of, the assessee and all other matters which he thinks would assist him in arriving at a fair and proper estimate. Though there must be necessarily some guess-work in the matter, it must be honest guess-work. Where there is an alternative remedy, the High Court may not in its discretion interfere under Article 226 of the Constitution. But the existence of an alternative remedy does not touch the jurisdiction of the Court to interfere. [Having regard to the exceedingly unsatisfactory nature of the assessment order, the High Court, exercising its discretion under Article 226, quashed the best judgment assessment and directed the officer to make another assessment according to law.]—*JHAGRU SHAW AND OTHERS v. COMMISSIONER OF COMMERCIAL TAXES AND OTHERS* [1966] 17 S.T.C. 130 (Cal.).

—*Principles stated—Whether assessment is valid.*—Assessments must necessarily be to some extent arbitrary in all cases where returns were not filed by the assessee, and the assessing authority made the assessment orders to the best of his judgment. So long as the assessing authority had acted honestly and not vindictively or capriciously, in making a fair estimate of the figure of assessment, the assessment order cannot be assailed on the ground that it had been made on surmise. If the assessing authority had proceeded on some material in drawing the inference, the estimate cannot be challenged, nor can the order imposing liability for tax be assailed on the ground that the assessing authority had acted arbitrarily or capriciously. If on the materials the assessing authority came to a conclusion that a penalty ought to be imposed in terms of section 11(1) of the Bengal Finance (Sales Tax) Act, 1941, it is not for the High Court in exercise of its jurisdiction under Article 226 of the Constitution to interfere with the findings of the assessing authority. [*Held,*

on the facts of the case (1) that the best judgment assessment was not capricious but was based on some materials and therefore could not be challenged; (2) that there was no denial of opportunity of being heard as required by section 11(1); and (3) that the order imposing penalty was not illegal.]—*RAMDHARI SAHA v. STATE OF WEST BENGAL* [1966] 17 S.T.C. 215 (Cal.).

—*Best judgment assessment based on turnover of previous three years—Legality of assessment.*—Section 11(4) of the C.P. and Berar Sales Tax Act, 1947, does not prescribe any particular method or process which the officer is required to follow in making a best judgment assessment. The language of the section does not lend support to the contention that the officer cannot make a best judgment assessment under the section without holding a local enquiry and investigation into the turnover of the assessee. The officer is not precluded from forming an estimate of the turnover for a year on the basis of the turnover of the previous three years. Where a best judgment estimate of the turnover for a particular year was arrived at on the basis of the average of the turnover for the three years previous to it and these turnovers were not best judgment estimates but were those actually found: *Held*, that the best judgment estimate made for the year was real and therefore the estimate made for the two subsequent years which took into account the turnover for that year was also real and not arbitrary. *Commissioner of Income-tax, Central and United Provinces v. Laxminarain Badridas* [1937] (5 I.T.R. 170; A.I.R. 1937 P.C. 133) referred to.—*GULABCHAND LAXMINARAYAN v. COMMISSIONER OF SALES TAX* [1964] 15 S.T.C. 618 (M.P.).

Nature of proceedings.—The proceedings under section 11(2) of the Bengal Finance (Sales Tax) Act, 1941, are quasi-judicial and they are to be initiated by a notice in Form VI. Where by the issue of such a notice an assessee is asked to appear on a particular day and if the assessee fails to appear on that day, the Commercial Tax Officer, on the date fixed for hearing, is entitled in law to make a best judgment assessment. In making such assessment, it is not open to the officer to make a computation arbitrarily. But if the assessee does not render assistance, the officer has the right to make the computation on such materials as are available to him. If the assessee appears on the date fixed for hearing, the assessee should be informed of the materials upon which the officer intends to rely. During the course of certain investigations, some books of account of the assessee were seized and upon inspection of

those books, the Commercial Tax Officer came to certain conclusions which were duly recorded. Subsequently proceedings were started against the assessee by the issue of a notice in Form VI, but as the assessee failed to appear on the day fixed for hearing, the officer made a best judgment assessment. In making the assessment order the officer only referred to the conclusions previously made without repeating verbatim what he had said before. The assessee contended that the assessment order should be a self-contained one and being a quasi-judicial proceeding it was not open to the officer to make reference to incidents which had happened before the hearing took place and of which no intimation was given to the assessee: *Held*, that as the assessee failed to appear on the date fixed for hearing, the officer was entitled to rely on his computations previously made and the fact he had referred to it only in his assessment order without repeating what he had said before did not render the assessment void.—*GEM & Co. v. STATE OF WEST BENGAL AND OTHERS* [1959] 10 S.T.C. 537 (Cal.).

—In making a best judgment assessment, the assessing authority discharges quasi-judicial functions and the order he passes must not be capricious, arbitrary or punitive. The order must also disclose the basis for the best judgment assessment, so that the higher authorities may know the grounds on which the assessment has been based. (An order, which appeared to be arbitrary and did not give the basis for the best judgment assessment, was vacated and the officer was directed to make a fresh assessment according to law). *Commissioner of Income-tax v. Laxminarain Badridas* [1937] (5 I.T.R. 170) applied.—*BALAKRISHNA & SONS v. SALES TAX OFFICER AND ANOTHER* [1961] 12 S.T.C. 272 (Ori.).

—When making best judgment assessments the taxing authorities should discharge their duty judiciously because they are discharging a quasi-judicial function. The principles governing best judgment assessments under the Indian Income-tax Act, 1922, also apply to best judgment assessments under the Sales Tax Act. [The Court remanded the case to determine the turnover afresh in the light of the principles governing best judgment assessments.] Where sales tax on purchase and sale points of copra during the assessment year was 4 per cent. and 2 per cent. respectively, the dealer would not be liable to surcharge at all on the purchase or sale price of copra under the proviso to section 3 of the Kerala Surcharge on Taxes Act, 1957.—*K. M. ALIKOYA & Co. v. STATE OF KERALA* [1961] 12 S.T.C. 567 (Ker.).

—*Powers of officer—Validity of assessment based on assumption—Power of High Court to interfere*

under Article 226.—In making a best judgment assessment under section 12(2)(b) of the General Sales Tax Act, 1125, there cannot be an arithmetical precision as the assessment depends upon so many factors, some of which at least are not capable of quantitative analysis. It must therefore be based on honest guesses to some extent. Even so, the process is a quasi-judicial one and therefore the assessments must be based on some material. When principles of natural justice have been violated the High Court can interfere under Article 226 of the Constitution even if there is another and an equally efficacious remedy available to the petitioner. The petitioner had kept books of account and had submitted a return. During the course of assessment proceedings it was discovered that certain declarations were made by two drivers of certain vehicles that passed through a particular check post on two dates. These declarations indicated that the petitioner had purchased certain bags of jaggery on those two dates. The officer assumed that similar quantities of jaggery had been brought through the check post by the petitioner every week of the year and arrived at the petitioner's turnover accordingly: *Held*, that the assumption was without any basis and therefore the assessment should be quashed.—*K. MOIDEENKUTTY v. SALES TAX OFFICER, TIRUR* [1967] 19 S.T.C. 302 (Ker.).

—*Estimation of turnover—Determination of turnover is not a calculation but an estimate—Nature of question that is raised—Question of fact or law.*—When a best judgment assessment is made without accounts under section 7(3), U.P. Sales Tax Act, 1948, it is impossible to look for an arithmetical justification for the determination of the turnover. Whatever is the amount determined is only an inference and no figures can be found to support it. It has to be based on circumstances but some circumstances have no quantitative value and other circumstances which have quantitative value are not the direct evidence of the correct turnover. The correct turnover has to be inferred from the circumstances having quantitative value; the connection between the circumstances having quantitative value and the amount to be determined is logical and not arithmetical. Determination of a turnover under section 7(3) is, therefore, in its very nature an estimate and not a calculation; it cannot be explained arithmetically. The assessee carrying on business in imported cloth submitted a return disclosing a turnover of Rs. 2,44,000 for the relevant assessment year, but the officer found that the assessee had concealed the importing of thirteen bales of cloth. The assessee also did not maintain its accounts properly, did not

file two quarterly returns of its turnover and did not submit quarterly statements of imports in the prescribed form. The Sales Tax Officer therefore rejected the return and accounts and fixed the turnover at Rs. 4,00,000 according to the best of his judgment and assessed it accordingly. On appeal the Judge (Appeals) accepted the returned turnover as the correct turnover of the disclosed sales, added to it the estimated turnover of the suppressed sales and determined the amount of taxable turnover at Rs. 2,60,000. The Judge (Revisions) held that it could not be said that the suppression of the sale of thirteen bales was the only suppression practised by the assessee and that there was no reason to hold that the estimate of the Sales Tax Officer was not the best according to his judgment. He accordingly restored the order of the Sales Tax Officer. At the assessee's instance the Judge (Revisions) referred the following question for the decision of the High Court: "Whether in the circumstances and facts of the case, the taxable turnover determined at Rs. 4,00,000 was just and proper": *Held*, (i) that the question framed by the Judge (Revisions) was not proper; it was not a question of law or exclusively of law. What is correct or legal depends upon the law applicable to the facts, but what is just and proper depends upon the judgment or discretion of the authority and not upon law, and certainly not exclusively upon law. Everything that is legal is not necessarily just and proper. Anything that involves discretion or judgment is a question of fact and not of law. That the Sales Tax Officer had to estimate the turnover according to the best of his judgment was a matter of law; what the turnover was according to the best of his judgment was a matter of fact. The question framed by the Judge (Revisions) was essentially a question of fact; (ii) that as it is illegal for a Sales Tax Officer to estimate a turnover under section 7(3) without taking any relevant circumstance into consideration or by disregarding all relevant circumstances a question of law may arise whether an estimate of a turnover by him is based on certain circumstances or, if he has taken certain circumstances into consideration, whether they can support the estimate. The only question that could therefore arise in the present case was, "whether the circumstances relied upon by the Sales Tax Officer could support the determination of the turnover of the assessee under section 7(3) at the figure of Rs. 4,00,000?"; (iii) that the determination of the turnover in the present case could not be described as a wild guess, having no relation to the circumstances, or a shocking determination, but was supportable by the circumstances stated by the Sales Tax Officer.

Dhakeswari Cotton Mills Ltd. v. Commissioner of Income-tax, West Bengal [1954] (26 I.T.R. 775; [1955] 1 S.C.R. 941) referred to.—*SRI JAMUNA DASS BAJAJ v. COMMISSIONER OF SALES TAX* [1966] 17 S.T.C. 598 (All.).

—*Rejection of account books—Addition to turnover—Whether arbitrary and capricious—Nature of best judgment assessment—Principles stated.*—The rejection of the account books does not give the taxing authority a right to make any assessment in any way it likes without any reference to the materials before him. The process of best judgment assessment, whether it be one relating to income-tax, agricultural income-tax or sales tax, is a quasi-judicial process, an honest and *bona fide* attempt in a judicial manner to determine the tax liability of a person. And such determination must be related to the materials before the authority. *Held*, on the facts, that the addition of about Rs. 27 lakhs to the turnover was arbitrary and capricious and was even *mala fide* in the sense that there had been no application of the mind to the question involved. Principles of natural justice demand that there should be a fair determination of a question by quasi-judicial authorities. Arbitrariness will certainly not ensure fairness. If giving a mere opportunity to show cause and to explain would satisfy the principles of natural justice the notice to show cause becomes an empty formality signifying nothing, for, after issuing the notice to show cause, the authority can decide according to his whim and fancy. The judicial process does not end by making known to a person the proposal against him and giving him a chance to explain. It extends further to a judicial consideration of his representations and the materials and a fair determination of the question involved. If the quasi-judicial authority disregards the materials available or if it refuses to apply its mind to the question and if it reaches a conclusion which bears no relation to the facts before it, to allow those decisions to stand would be violative of the principles of natural justice. Arbitrary decisions can also, therefore, result in violation of the principles of natural justice which is a fundamental concept of Indian jurisprudence. In certain cases, where an authority refuses to apply its mind to the question and makes a decision as it likes, it may amount to even a *mala fide* decision. —*M. APPUKUTTY v. SALES TAX OFFICER, KOZHIKODE* [1966] 17 S.T.C. 380 (Ker.).

—*Must be based on some material.*—A best judgment assessment under section 12(3) of the Mysore Sales Tax Act, 1957, cannot be a mere speculation but must be founded upon material which can yield the estimate made by the

Commercial Tax Officer. *Held*, on the facts, that the estimate made by the Commercial Tax Officer was arbitrary.—*SRI GOPAL SRINIVASA SHENOY v. THE STATE OF MYSORE* [1968] 21 S.T.C. 483 (Mys.).

—*Estimation—Suppressed purchases and suppressed sales—Excess sales not covered by purchases alone should be added.*—Any estimate of turnover of an assessee should be reasonable and must be based on some material. When both purchases and sales of goods have not been shown in the accounts, it may be reasonable to assume that the goods covered by such sales to the extent possible came from the goods purchased but not disclosed. Therefore, in applying best judgment, addition to the turnover of sales on the basis of suppressed purchases and also on the basis independently of suppressed sales is not correct. It is only any excess sales not covered by the purchases that can be added.—*A. PONNUSWAMY v. THE GOVERNMENT OF MADRAS* [1968] 21 S.T.C. 71 (Mad.).

Scope of section 10(2)(b) and (4), Bihar Sales Tax Act.—Under the Bihar Sales Tax Act, 1944, when no return is submitted by an assessee the assessment has to be made under section 10(4) of the Act by the officer concerned to the best of his judgment. The provisions of section 10(4) are analogous for this purpose to the provisions of section 23(4) of the Indian Income-tax Act, 1922. In making a best judgment assessment there must necessarily be guess-work and the only thing required is that the guess-work should be honest guess-work. Even the general repute of the man and local knowledge are good materials for making the assessment. Principles laid down by the Judicial Committee in *Commissioner of Income-tax, United and Central Provinces v. Badridas Ramrai Shop* [1937] (5 I.T.R. 170; 64 I.A. 102) applied. There is no real difference between an assessment under section 10(2)(b) and an assessment under section 10(4) of the Bihar Sales Tax Act. Applications to state cases must be discouraged in matters, which, on ultimate analysis, are really only questions of a fair figure of assessment. In construing section 23(3) of the Indian Income-tax Act, no assistance can be derived from the wording of section 13 of that Act. Section 10(2)(b) of the Bihar Sales Tax Act is analogous to section 23(3) of the Indian Income-tax Act. The only difference between an assessment under section 23(3) of the Indian Income-tax Act in a case in which the accounts have been found to be incorrect and dishonest and an assessment under sub-section (4) of that section is that the Act contemplates a more summary method when the officer is acting under sub-section (4) on account of the deliberate default of the assessee: *Held*, on the facts of the case that

the assessments made by the officer under section 10(4) and section 10(2)(b) of the Bihar Sales Tax Act were justified.—*MESSRS RAGHUBAR MANDAL HARIHAR MANDAL v. THE STATE OF BIHAR* [1952] 3 S.T.C. 65 (Pat.). On appeal to the Supreme Court see the next para.

Scope of section 10(2)(b), Bihar Sales Tax Act.—The provisions of section 10(2)(b) of the Bihar Sales Tax Act, 1944, and section 23(3) of the Indian Income-tax Act, 1922, are substantially the same and impose on the assessing authority a duty to assess the tax after hearing such evidence as the dealer may produce and such other evidence as the assessing authority may require on specified points. In making an assessment under section 10(2)(b) the Sales Tax Officer is not fettered by technical rules of evidence and pleadings and he is entitled to act on material which may not be accepted as evidence in a court of law; but he is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. There must be something more than bare suspicion to support the assessment. When the returns and the books of account are rejected, the assessing officer must make an estimate and to that extent he must make a guess; but the estimate must be related to some evidence or material and it must be something more than mere suspicion. He must make what he honestly believes to be a fair estimate of the proper figure of assessment and for this purpose he must take into consideration such materials as the assessing officer has before him, including the assessee's circumstances, knowledge of previous returns and all other matters which the assessing officer thinks will assist him in arriving at a fair and proper estimate. *Dhakeswari Cotton Mills Ltd. v. Commissioner of Income-tax, West Bengal* ([1955] 1 S.C.R. 941; 26 I.T.R. 775) followed. Decision of the Patna High Court in *Raghubar Mandal Harihar Mandal v. The State of Bihar* [1952] (3 S.T.C. 65) reversed.—*RAGHUBAR MANDAL HARIHAR MANDAL v. THE STATE OF BIHAR* [1957] 8 S.T.C. 770 (S.C.).

Jurisdiction to make assessment.—Under sub-section (3) of section 7 of the U.P. Sales Tax Act, 1948, the Sales Tax Officer is authorised to determine the turnover of the dealer for the previous year to the best of his judgment and assess the tax on the basis thereof in three circumstances: firstly, when the dealer does not submit any return under sub-section (1) within the period prescribed; secondly, when the return submitted appears incorrect; and thirdly, when the return submitted appears to be incomplete. It is, therefore, within the jurisdiction of the assessing authority to determine

whether any return as contemplated by sub-section (1) had been submitted to him or not and that, if any such return had been submitted, whether it is correct or complete. The assessing authority did not consider in view of the interpretation that he put on the provisions of sub-section (1) and of the rules that the return submitted by the applicant on the basis of the turnover of the assessment year was incorrect. He had jurisdiction to decide wrongly. His jurisdiction to assess under section 7(3) is not dependent on certain conditions precedent but is dependent on his own finding whether a proper return had been submitted or not. He had jurisdiction to decide whether such a proper return had been submitted.—*MODI SUGAR MILLS LTD., AND ANOTHER v. THE SALES TAX OFFICER, GHAZIABAD, AND OTHERS* [1954] 5 S.T.C. 182 at p. 186 (All.).

Assessment under Punjab General Sales Tax Act, 1948—Whether barred by limitation—Assessing Authority stating that assessment was made to the best of his judgment—Effect.—For the assessment year 1955-56 the respondent-firm filed quarterly returns of turnover under the Punjab General Sales Tax Act, 1948. Though the returns were filed beyond time no objection was taken by the Assessing Authority. Not satisfied with these returns the Assessing Authority served a notice under section 11(2) of the Act on the respondent on January 11, 1957, before the expiry of 3 years from the dates of filing of the returns. On July 5, 1960, he examined a partner of the firm. The Assessing Authority disbelieved the accounts produced by the partner and passed an assessment order on August 11, 1960, adding sales of Rs. 4 lakhs to the gross turnover. The respondent thereupon filed a writ petition and the High Court held that the order was an assessment on best judgment basis under section 11(4) and as it was made after three years after the close of the assessment year it was without jurisdiction. On appeal to the Supreme Court: *Held*, (i) that the mere fact that the Assessing Authority mentioned that he made the order on the best judgment basis cannot be conclusive, for, merely calling it as a best judgment assessment, the order did not become one; (ii) that *prima facie* none of the conditions specified in sub-sections (4) to (6) of section 11 existed in the present case and therefore though the Assessing Authority stated that he had to assess the firm to the best of his judgment, the order could not be said to be either under sub-section (4) or sub-section (5) or sub-section (6); (iii) that assessment proceedings commence, in the case of a registered dealer, either when he furnishes a return or when a

notice is issued to him under section 11(2) and if such proceedings are taken within the prescribed time though the assessment is finalised subsequently, even after the expiry of the prescribed period, no question of limitation would arise; (iv) that since, in the present case, the filing of the returns and the service of the notice under section 11(2) were within the prescribed time, the assessment order, though made after the expiry of three years from the end of the assessment year, was within jurisdiction and valid. Decision of the Punjab High Court reversed. *Ghanshyamdas v. Regional Assistant Commissioner of Sales Tax, Nagpur* [1963] 14 S.T.C. 976; [1964] 4 S.C.R. 436 applied.—*THE STATE OF PUNJAB AND OTHERS v. TARA CHAND LAJPAT RAI* [1967] 19 S.T.C. 493 (S.C.).

—*Difference between assessments under section 11(3) and 11(4), Punjab General Sales Tax Act, 1948—Limitation—Whether best judgment assessment was arbitrary.*—Assessments under section 11(3) and section 11(4) of the Punjab General Sales Tax Act, 1948, are both “best judgment assessments” and the difference between them would be of degree only. An assessment under section 11(3) would not be so summary as an assessment under section 11(4). A question of limitation would arise only in the case of a “best judgment assessment” under section 11(4) and not under section 11(3). The assessee filed a return and in support thereof produced the account books and appeared before the Assessing Authority with his counsel. After examining the account books and hearing the counsel and the assessee, the order of assessment was passed: *Held*, that the assessment was under section 11(3) and not under section 11(4), because there was no failure on the part of the assessee to comply with the terms of the notice issued under section 11(2); *Held*, further, on facts of the case, that the best judgment assessment under section 11(3) was made on the basis of material and could not be characterised either as arbitrary or without evidence. *Raghubar Mandal Harihar Mandal v. State of Bihar* [1957] 8 S.T.C. 770; A.I.R. 1957 S.C. 810 referred to.—*BUDH RAM NARAIN DASS v. THE STATE OF PUNJAB* [1966] 18 S.T.C. 437 (Punj.).

—*Limitation—When officer can be said to “proceed to assess” under section 11(4), Punjab General Sales Tax Act (46 of 1948).*—*JAGAT RAM OM PRAKASH v. EXCISE AND TAXATION OFFICER, ASSESSING AUTHORITY, AMRITSAR* [1965] 16 S.T.C. 107 (F.B.) (Punj.). [There was a conflict of judicial opinion on the question whether a best judgment assessment under the Punjab General Sales Tax Act should be finalised within three years. All the

cases are reviewed in the Full Bench decision in 16 S.T.C. 107.]—See also *Faridabad Industrial and Quarrying Company v. The Excise and Taxation Officer (Assessing Authority), and Another* [1966] 18 S.T.C. 101 (Punj.).

Assessments under section 12(3), Madras General Sales Tax Act, 1959.—The scheme of the Madras General Sales Tax Act, 1959, and the history of section 13 clearly show that the power to demand provisional returns and make provisional assessment is a power separate from the power to make a final assessment. It is only where an assessment is made under section 12(2) that there can be any room for applying section 12(3). Although an assessee submitted erroneous provisional monthly returns, they could not be made the basis of an assessment under section 12(2) if before an assessment order is made, the assessee informs the assessing officer of the correct return of the turnover. In such a case the officer has got to make the assessment only on the basis of such correct return and not on the basis of the provisional returns. It does not matter in which form the correct return of the turnover is brought to the notice of the assessing officer before he made the final order under section 12(2). The substance and not the form should be regarded.—*The State of Madras v. M. S. K. Shahul Hameed* [1967] 19 S.T.C. 288 (Mad.).

—An assessee was found to have actually suppressed in his regular accounts as well as monthly returns submitted under rule 18 of the Madras General Sales Tax Rules, 1959, the turnover disclosed in an anamath pocket note-book which was discovered by the authorities during the inspection of the assessee's premises. However before the final assessment was made, the assessee filed a supplementary return in which he included the turnover disclosed in the pocket note-book. On the question whether a penalty could be levied on the assessee under section 12(3) of the Madras General Sales Tax Act, 1959: *Held*, that the filing of the supplementary return would not be a ground for condoning the assessee's wilful default and the assessing authority would be competent to levy a penalty on him. *State of Madras v. M. S. K. Shahul Hameed* [1967] (19 S.T.C. 288) explained and distinguished.—*M. V. Pavadai Chettiar Sons v. The State of Madras* [1968] 21 S.T.C. 67 (Mad.).

—There is no provision in the Madras General Sales Tax Act, 1959, which forbids the filing of a return after a prescribed time, or which forbids a return filed belatedly being considered by the assessing officer in the assessment proceedings. The whole object of sub-section (2) of section 12

is to provide for two contingencies, (1) where a return has not been filed within the prescribed time, and (2) where one is filed and it is in the opinion of the assessing officer incorrect or incomplete. In either of these cases the jurisdiction of the officer to assess by best judgment does arise. But this does not mean that where before an assessment order is made a return is filed, though belatedly, the assessing officer is at liberty to ignore it and still apply his best judgment. Such a procedure will be wholly unrealistic and unrelated to the task of finding out the true net chargeable turnover which is the object of section 12. Though the jurisdiction to assess by best judgment may arise in the event of an assessee failing to file his return within the prescribed time, nevertheless, the return filed belatedly is bound to be considered by the assessing officer in making the assessment. The officer has therefore to look into the return and if he feels that it is incomplete or incorrect, he has to follow the procedure prescribed by the proviso to sub-section (2) and give an opportunity to the assessee to prove the completeness or correctness of the return. *Deekan Trading Co. v. The Joint Commercial Tax Officer and Another* (Writ Petition No. 674 of 1962) dissented from. *State of Madras v. M. S. K. Shahul Hameed* [1967] (19 S.T.C. 288) applied.—*Bata Shoe Company Private Ltd. v. The Joint Commercial Tax Officer, Harbour Division II, Madras, and Another* [1968] 21 S.T.C. 135 (Mad.).

—The power to levy penalty under section 12(3) of the Madras General Sales Tax Act, 1959, can be exercised only if the assessment falls within the purview of section 12(2). In other words, it is not sufficient to attract sub-section (3) that no return has been filed, or if one is filed, it is incomplete or incorrect. After making such enquiry as the assessing authority may consider necessary he should, as a result, find reason to apply best judgment in determining the correct turnover. Best judgment is applied to find out the correct turnover on estimate which will arise only where the enquiry contemplated by the sub-section shows that accounts books and the other records of the assessee cannot be accepted as reliable or true or complete. Where the account books are accepted along with the other records, there can be no room or justification for applying best judgment and the assessment will not fall within the purview of section 12(2). An assessment may be partly under sub-section (1) and partly under sub-section (2). Where part of the assessment, is not based on estimate or best judgment, it is clearly not within the purview of sub-section (2) and, therefore, in respect

of such part of the assessment, there will be a bar to the levy of penalty under sub-section (3). Best judgment cannot be a wild guess, but a reasonable and justifiable guess based on some material at least. *The State of Madras v. M. S. K. Shahul Hameed* [1967] (19 S.T.C. 288) referred to.—S. G. JAYARAJ NADAR & SONS *v.* THE STATE OF MADRAS [1968] 21 S.T.C. 180 (Mad.).

Best judgment assessment for failure to submit return.—The assessee carrying on business as merchants in Kanpur deposited in August and November, 1948, two cheques in the Treasury in the name of the Sales Tax Department but they took no steps to intimate to the Sales Tax Officer their election of the assessment year nor filed any return of their total turnover either of the previous year or of the current year till 6th December, 1948. Finding that there had been inordinate delay in the filing of the return the Sales Tax Officer assessed them on 13th December, 1948, under section 7(3) of the U.P. Sales Tax Act, 1948, on an estimated turnover for the previous year ending 31st March, 1948. The assessee then presented an application to the Judge (Revisions), Sales Tax, Uttar Pradesh, and contended that the assessment should not have been based on the turnover of the previous year but on the turnover of the assessment year. The learned Judge (Revisions), Sales Tax, rejected this contention and also refused to refer certain questions to the High Court. The assessee then applied to the High Court under section 11 of the Act: *Held*, that as the assessee had not filed any returns of their total turnover either of the current year or of the previous year within the prescribed time, they had disqualified themselves from asking the learned Judge (Revisions), Sales Tax, to refer the questions to the High Court. The two cheques which were deposited in the Treasury in the name of the Sales Tax Department could not be regarded as substitutes for the returns which the assessee was under a duty to file under the proviso to section 7 as also under rule 39 of Chapter VIII. Until the framing of the rules by the High Court with regard to the papers to be filed along with the applications under the Sales Tax Act, the rules which apply in regard to the filing of judgments, orders and other papers in connection with income-tax references should be deemed to be applicable to references under the Sales Tax Act.—*RADHA KISHAN BHAGWAN DIN v. COMMISSIONER OF SALES TAX, UTTAR PRADESH* [1951] 2 S.T.C. 173 (All.).

—“No return”—Return furnished without prepayment of admitted amount of tax—Issue of notice in Form VI(a) and assessment under section 11.—The

prepayment of the admitted amount of tax mentioned in section 10(3) of the Bengal Finance (Sales Tax) Act, 1941, is a precondition to the furnishing of a return, and unless such payment has been made the return filed cannot be considered as a valid return and it is “no return” in the eye of law. The Commercial Tax Authorities would be justified in treating a return filed without payment of the admitted amount of tax as if no return has been filed and issuing notice according to Form No. VI(a) of the Rules framed under the Act. Even assuming that such a case is not a case of “no return” but an incomplete return and the notice should, therefore, have proceeded under clause (b) of Form VI instead of under clause (a), the jurisdiction of the Commercial Tax Officer to deal with the matter under section 11 is not affected and the proceedings initiated under that section are not invalid inasmuch as the exercise of the power should be referred to the jurisdiction which confers validity upon the acts of the Commercial Tax Officer rather than which makes it nugatory. If the admitted amount of tax has been paid but for some reason or other, the challan has not been enclosed, that may make the return “incomplete”, but the prepayment of the admitted amount is a condition precedent to the furnishing of the return and until the money is so paid into a Government Treasury or the Reserve Bank of India no return can be validly furnished. Where the law lays down a precondition, then that must be observed in order to hold that the law has been complied with. The “omission” or “error” mentioned in section 10(4) are omissions and errors in the body of the return, relating to its subject-matter or the figures mentioned therein. It can have nothing to do with the prepayments mentioned in sub-section (3).—*KHAS KAJORA COAL CO., LIMITED v. MEMBER, BOARD OF REVENUE, WEST BENGAL* [1966] 18 S.T.C. 79 (Cal.).

For not registering as dealer—Law prior to amendment by Bengal Act XLVIII of 1950.—In respect of the period 14th June, 1949, to 1st August, 1950, a dealer applied for registration but due to delay in the office of the department, registration was granted to him only after the expiry of one year and four months. A best judgment assessment was made on the dealer under section 11(2) for failure to get himself registered under the Act: *Held*, that the failure of the dealer to get himself registered did not give jurisdiction to the Commercial Tax Officer to make a best judgment assessment under section 11(2), inasmuch as during the relevant period the section did not require a dealer to get himself registered but only required him to apply for registration. Though sections 4 and 7 laid down

a particular date for the starting of liability to taxation the taxing authorities might exercise their discretion when making assessment and allow some concession for delay in the issue of the registration certificate provided this was not due to the laches on the part of the dealer. This would be justified by equity and fairness.—**MANINDRA NATH GUIN v. STATE OF WEST BENGAL** [1955] 6 S.T.C. 672.

For wilfully failing to apply for registration.—The assessee Hindu undivided family carrying on business at J under the name of MRP started a business at B on 1st April, 1946, under the name MPD. The assessment related to the period 1st April, 1946, to 31st March, 1947. The business at J was registered under the Bihar Sales Tax Act but the family had not made an application for registration with regard to the business carried on at B. The Sales Tax Officer paid a surprise visit to the assessee's shop at B and seized certain account books. As the assessee did not produce all the relevant books in spite of several opportunities given to it, a best judgment assessment was made on it under section 10(5) and a penalty was also imposed on it. The assessee contended, *inter alia*, that as the Board of Revenue had found that the business at B "was an extension of the business at J", the dealer was the firm of MRP carrying on business at J and the assessment should be made upon that firm and not upon the assessee: *Held*, (i) that as the assessee Hindu undivided family was the owner of both the businesses, the assessee was the dealer carrying on both the businesses within the meaning of section 2(c) of the Act; (ii) that the assessee Hindu undivided family was liable to pay tax with regard to the business carried on at B and had nevertheless wilfully failed to apply for registration of that branch and therefore the assessment had been properly made upon it under section 10(5); (iii) that the provisions of section 4(2) did not apply to the case because the dealer carrying on both the businesses was one and the same and therefore the business carried on at B could not be regarded as a new business started for the first time; (iv) that the imposition of penalty under section 10(5) upon the petitioner was legal; (v) that the assessment made on the assessee on 21st June, 1948, for the period 1st April, 1946, to 31st March, 1947, was not barred by limitation under section 10(6).—**MIRZAMUL PRABHU DAYAL v. THE STATE OF BIHAR** [1957] 8 S.T.C. 508 (Pat.).

Best judgment assessment under section 13(5), Bihar Sales Tax Act—Whether dealer should have wilfully failed to apply for registration.—The proper interpretation of section 13(5) of the

Bihar Sales Tax Act, 1947, is that the imposition of the penalty is subject to the condition precedent that the dealer had wilfully failed to apply for registration for the period in question. But the assessment of an unregistered dealer under section 13(5) is not subject to any such condition. The only condition for making such assessment is that the Commissioner should be satisfied upon information which has come into his possession that the unregistered dealer has been liable to pay tax in respect of any period. Section 13 of the Act imposes no charge on the subject and it is merely a part of the machinery of assessment. The liability to pay sales tax is founded upon sections 4 and 5 which are the charging sections. The jurisdiction to assess and the liability to pay tax do not depend on the issue or non-issue of the notice under section 13.—**SHRI PARWATIJI MILLS v. THE STATE OF BIHAR** [1957] 8 S.T.C. 653 (Pat.).

For failure to register—"Wilfully failed to apply for registration"—Meaning of.—The expression "nevertheless wilfully failed to apply for registration" in section 12(5) of the Orissa Sales Tax Act, 1947, connotes a deliberate failure to apply for registration in order to avoid taxation. The assessee applied on 22nd August, 1949, under section 9 of the Act, to be registered as a dealer and stated in the application that his gross turnover during the period from 22nd August, 1948, to 21st August, 1949, was Rs. 5,005. An Inspector reported on 11th November, 1949, that the gross turnover of the assessee did not exceed Rs. 5,000 and on this report the application was filed. But no intimation as to this was sent to the assessee. On 18th December, 1950, the assessee sent a reminder requesting the officer to grant certificate of registration on the basis of his application dated 22nd August, 1949. The officer informed the assessee by his letter dated 11th September, 1951, that the application filed on 22nd August, 1949, was cancelled as he was not then liable for registration and asked him to furnish a fresh application for registration. The assessee then submitted an application dated 18th October, 1951, and on the basis of this application the assessee was granted a registration certificate on 2nd November, 1951. The question was whether the assessee could be legally assessed to sales tax under section 12(5) for the quarters ending 31st December, 1950, and 31st March, 1951, on the ground that the application for registration dated 22nd August, 1949, was not a valid application: *Held*, that on the facts and circumstances of the case, it was not established that the assessee wilfully failed to apply for registration and therefore the assessments could not be made under section 12(5).—**COMMISSIONER**

OF SALES TAX, CUTTACK, ORISSA *v.* BRIJRAJ RAMESHWAR [1966] 17 S.T.C. 295 (S.C.).

For failure to produce genuine account books.—*Ex hypothesi* an assessment under section 10(3) of the Bihar Sales Tax Act, 1944, must be to some extent arbitrary because it is based on inadequate material. It is a mere estimate. But if it is made by the Sales Tax Officer *bona fide* and to the best of his judgment (which only means "as best as he can in the circumstances") the assessee has no cause for complaint. Where the assessee withheld genuine books of account and merely wanted time for writing out a fresh set of incorrect accounts for submission to the Sales Tax Authorities, it is open to the Sales Tax Officer to make the assessment under section 10(3) to the best of his judgment. Where taking everything into consideration, *viz.*, the situation of the shop, the rush of customers and the stock in the shop and also the estimate made by the Assistant Commissioner for the previous quarters, the Sales Tax Officer came to the conclusion that the average sale of the assessee was Rs. 8,000 per day for the period in question and it was not stated on behalf of the assessee that the officer had acted *mala fide*: *Held*, that there was material to justify the finding of the officer that the average sale of the assessee was Rs. 8,000 per day: *Held further*, that the question whether there was any evidence on which the assessment could be based was hardly a question of law. The jurisdiction with which the High Court is invested under section 21 of the Act is of an exceptional nature and is limited by the express terms of the section that the High Court is in seisin of only such question of law as has been duly raised in the statement of the case.—DOMA SAHU KISHUN LAL SAO *v.* STATE OF BIHAR [1951] 2 S.T.C. 37 (Pat.).

For failure to file return and to produce genuine books of account.—An assessment under section 10(4) of the Bihar Sales Tax Act, 1944, is made in summary proceedings and in making the assessment the Sales Tax Officer is in no way bound to confine himself to any special kind of materials. Where the assessee has not filed a return and has failed to produce the genuine books of account for the relevant quarter the Sales Tax Officer is entitled to make the assessment to the best of his judgment under section 10(4) on the basis of the sales of the dealer for the previous quarters. [The High Court did not answer the questions formulated on the ground that the officer had acted under section 10(4) and had made the assessment to the best of his judgment.] *Income-tax Commissioner v. Badridas Ramrai Shop, Akola* [1937] (5 I.T.R. 170) referred to.—RAMDHAN LAL SHARAFF *v.* THE PROVINCE OF BIHAR [1952] 3 S.T.C. 323 (Pat.).

For failure to file return and to produce account books—*Legality of best judgment assessment relying on Inspector's report.*—In making a best judgment assessment under section 13(4) of the Bihar Sales Tax Act, 1947, for failure to file a return and to produce the account books, the Sales Tax Officer mainly relied on the Inspector's report. The assessee contended that the assessment was illegal since neither the Inspector's report nor the substance of it was disclosed to him before the officer proceeded to make the assessment. The assessee however argued on the questions raised by the Inspector's report at the appellate stage before the Commissioner and also at the revisional stage before the Board of Revenue: *Held*, that, in the circumstances of the case, there had been no violation of the principles of natural justice and the assessment was therefore valid. *Dhakeswari Cotton Mills Ltd. v. Commissioner of Income-tax, West Bengal* [1954] (26 I.T.R. 775; [1955] 1 S.C.R. 941) distinguished.—R. B. HARDUTT MULL JUTE MILLS *v.* THE STATE OF BIHAR [1956] 7 S.T.C. 666 (Pat.).

For filing incomplete or incorrect returns.—The word "rejection" is of wide import and takes in non-acceptance of the return. Failure to believe it or to give credence to it amounts to its rejection. But under rule 13 of the Hyderabad General Sales Tax Rules, 1950, all that is necessary before the turnover is determined by the officer to the best of his judgment is that he should find that the return submitted by the assessee appears to be incorrect or incomplete. The rule does not employ the expression "rejection" and therefore when the assessing authority does not accept the return as the basis for assessment, resort is to be had to rule 13.—STATE OF A. P. *v.* DONTALA RAJAIHA [1960] 11 S.T.C. 819 (A.P.).

For producing unreliable account books.—Where books of account or documents produced by an assessee in pursuance of a notice served by the taxing authorities under section 10(2)(a) of the Bihar Sales Tax Act, 1944, are found to be quite unreliable so that the officer is unable to make an assessment on the basis of the documents produced, the taxing officer would be justified in making an assessment under section 10(3) to the best of his judgment because in substance the assessee has failed "to comply with all the terms of a notice issued under sub-section (2)" of section 10 of the Act.—KANIRAM JANKI DAS *v.* THE STATE OF BIHAR [1952] 3 S.T.C. 230 (Pat.).

For not submitting returns and producing accounts.—Where the assessee carrying on business in foodgrains-potato, sugar, oil-seeds etc., did not furnish quarterly returns and did

not produce his books of account though he was given several opportunities and he was therefore assessed to sales tax to the best of judgment on a certain turnover: *Held*, on the facts of the case, that there was material to support the assessment.—*DEBU LAL GUDARMAL v. THE STATE OF BIHAR* [1957] 8 S.T.C. 583 (Pat.).

Failure to produce books and documents.—Where the assessee has not produced the books and documents or has not furnished any information to the Sales Tax Officer, the officer would be justified in making a best judgment assessment relying on his inspection reports. The quantum of tax cannot be the subject-matter of dispute before the High Court. It is only when the assessment is arbitrary and without jurisdiction that the court can interfere.—*RAJAB ALI PIRANI v. STATE OF ANDHRA PRADESH* [1967] 19 S.T.C. 312 (A.P.).

For non-production of stock book and ledger account.—If the Sales Tax Authorities have reason to suspect that the account books of the assessee are not reliable or that the assessee has suppressed certain material document relating to the account books, it is open to them under the provisions of section 13(3) of the Bihar Sales Tax Act, 1947, to make an assessment to the best of their judgment. Where the assessee did not produce the stock book or any ledger account from which the total quantity and value of the various articles purchased and sold could be verified, the Sales Tax Authorities would be justified in making a best judgment assessment under section 13(3).—*COMMISSIONER OF SALES TAX, BIHAR v. GANGA PRASAD JAI PRAKASH* [1961] 12 S.T.C. 716 (Pat.).

Minor discrepancy in accounts.—A discrepancy of Rs. 10 was found in the accounts furnished by the assessee and when he was called upon to explain the same, he expressed his inability to account for the irregularity. The Sales Tax Officer was not prepared to condone this irregularity and, treating the accounts as unreliable, he made a best judgment assessment under section 12(3) of the Orissa Sales Tax Act, 1947: *Held*, that the officer could make the best judgment assessment under section 12(3).—*KHUBRAM ASRAM v. COMMISSIONER OF SALES TAX, ORISSA* [1961] 12 S.T.C. 582 (Ori.).

For failure to include transactions in accounts.—Where transactions pertaining to two bills, though not found entered in the account books at the time of inspection, were duly incorporated in the return filed within the period prescribed by the rules, and they had been subject to sales tax, it could not be said that the transactions had escaped assessment. But there would be

escapement of assessment if the transactions were not included in the relevant return but were detected subsequently by the department. Estimation of turnover by multiplying two transactions found to be suppressed with the number of days under the assumption that similar transactions must have been suppressed for all those days is arbitrary and bad in law.—*S.M. YOUSOOF SAHIB v. THE ADDITIONAL COMMERCIAL TAX OFFICER (EVASIONS), VIJAYAWADA, AND ANOTHER* [1967] 19 S.T.C. 210 (A.P.).

For failure to maintain accounts of sales—Application of flat rate.—Where a dealer has not maintained any account of his sales, it is open to the taxing authority exercising its judgment reasonably and judicially to compute the profit by applying a flat rate of a certain percentage to the admitted figure of total purchases. But the question at what rate the profit should have been calculated is essentially a question of fact depending upon the nature and extent of the business and the surrounding circumstances and does not raise any question of law. *Held*, further, on the facts of the case, that the Board of Revenue was justified in determining the liability of the assessee to tax during the assessment period on the basis of the material available on record instead of remanding the case. *Feroz Shah v. Income-tax Commissioner* [1933] (1 I.T.R. 219 (P.C.)) referred to.—*PADAMSINGH v. COMMISSIONER OF SALES TAX, MADHYA PRADESH* [1965] 16 S.T.C. 134 (M.P.).

For not maintaining account books—Deduction in respect of export sales.—As the assessee did not maintain account books, the Sales Tax Officer made a best judgment assessment under section 11(4) of the C.P. and Berar Sales Tax Act, 1947, by increasing the sales disclosed by the bill books by a certain percentage. The assessee however was allowed deduction of a certain sum representing goods exported outside the State when he proved the same by producing railway receipts. The assessee contended that even in the case of added sales in accordance with section 11(4), allowance must be made as if the goods were exported by him: *Held*, that the assessee was entitled to deduction only in respect of those sales which were proved to have been exported outside the State. *Hirji Kalyanji Wadera v. State of Maharashtra* [1965] (16 S.T.C. 502) referred to.—*HIRJEE v. THE STATE OF MAHARASHTRA AND ANOTHER* [1966] 18 S.T.C. 460 (Bom.).

Finding that accounts are not reliable—Rejection of accounts and best judgment assessment.—Where the Sales Tax Officer, and the Assistant Commissioner of Sales Tax on appeal had found that

the assessee's accounts were not properly maintained and were not reliable, the revisional authority under section 22 of the C.P. and Berar Sales Tax Act, 1947, has no jurisdiction to upset that finding which is one of fact. Where the accounts of an assessee are not correct and not properly maintained or if they are not forthcoming, the authorities will be well within their jurisdiction in making a best judgment assessment under section 11(4). Where in making a best judgment assessment the officers gave their reasons, discussed the figures mentioned by the assessee and the figures as appearing in the account books and then came to a decision: *Held*, that the officers had not acted arbitrarily or capriciously and the assessment was therefore valid.—*SONUBAI v. SALES TAX OFFICER, NAGPUR, CIRCLE II, AND OTHERS* [1962] 13 S.T.C. 952 (Bom.).

Suppression of several items of transactions—Rejection of books and assessment to best of judgment—Legality.—Pursuant to a notice issued under section 12(2) of the Orissa Sales Tax Act, 1947, the assessee, carrying on business in grocery and various other goods, produced certain books of account to substantiate his returns. The Sales Tax Authorities however rejected the books of account and made a best judgment assessment under section 12(3) of the Act relying on the following materials: (1) suppression of several items of transactions in the books of account; (2) confidential reports received by the assessing authorities that the assessee was in the habit of suppressing some of his transactions with a view to escape payment of sales tax; (3) the Inspector's finding shortage on surprise visit; and (4) the habit and the conduct of the assessee: *Held*, that the Sales Tax Authorities had proceeded to make the assessment in accordance with law and that there were materials on record to support the best judgment assessment.—*SILLA KRISHNA MURTY v. COMMISSIONER OF SALES TAX, ORISSA* [1961] 12 S.T.C. 584 (Ori.).

Omission of purchases in account books.—The merit of a best judgment assessment does not raise a question of law and cannot be canvassed for the first time in an application under subsections (2) and (3) of section 22 of the East Punjab General Sales Tax Act, 1948. The provisions of section 13(1) regarding the manner of keeping accounts can have no application to a case where the assessing authority is scrutinising the accounts of a past year about the maintenance of which no notice can be issued under section 13(1) at the time of the assessment. Where the Assessing Authority came to the conclusion that the account books of the assessee were unreliable

inasmuch as there were omissions of purchases in them and made a best judgment assessment on him on a consideration of the amount of purchases and sales and the scrutiny of the accounts as were available: *Held*, that the best judgment assessment was proper. The omission in the accounts by itself could be the basis of the conclusion of the Sales Tax Authorities and if, in addition, they had taken into consideration other factors which might seem to involve questions of law, reference on the latter would be meaningless.—*BHAGWAN DAS SUD AND SONS v. FINANCIAL COMMISSIONER, PUNJAB, CHANDIGARH* [1960] 11 S.T.C. 431 (Punj.).

Best judgment assessment for three quarters for suppression of sale of few items in one quarter.—Errors apparent on the face of the record are always treated as errors of jurisdiction for purposes of quashing and for issuing a writ of *certiorari*. The assessee submitted a return of their sales for three quarters but did not include in the return of the first quarter the sum of Rs. 125 being the sale amount of five watches and the officer for that reason added Rs. 15,000 not only to the return made for the period during which the watches were sold but to the returns of all the three periods. The assessee thereupon filed an application under Article 226 of the Constitution for quashing the assessments: *Held*, that the assessments for the three periods should be quashed inasmuch as they were based upon mere guess-work and there was no proper basis for making the best judgment assessment. As the error was apparent on the face of the order, it was not necessary for the assessee to go in appeal under the Sales Tax Act before invoking the jurisdiction of the High Court under Article 226.—*JAMI NARASAYA PRUSTY & BROTHERS v. STATE OF ORISSA* [1958] 9 S.T.C. 648 (Oris.).

Defect in accounts of one quarter—Whether whole year's account liable to be rejected.—See *JAMI BISWANATH PRUSTHY v. COMMISSIONER OF SALES TAX* [1961] 12 S.T.C. 606 (Ori.) under ACCOUNT BOOKS, page 6 *supra*.

Discovery of suppression of accounts for portion of year—Estimation for whole year based on suppression.—Certain account books seized in the course of the assessment year disclosed suppressions of turnover by the assessee for a particular period of the year. The books further revealed that the assessee had suppressed a turnover in the previous year also. The assessing authority thereupon made an estimate of the turnover for the rest of the year on the basis of the suppression. The assessee challenged this estimate as

illegal. The Tribunal which looked into the account books produced before it observed that there were other secret books which related to a further suppression but they were not taken into account by the assessing authority: *Held*, that the estimate made by the assessing authority was not based merely on suspicion or pure guess and that there was sufficient material which could furnish a basis for making the estimate.—*G. NARASIMULU v. THE STATE OF ANDHRA PRADESH* [1962] 13 S.T.C. 502 (A.P.).

Hotel business—Feeding charges of servants not taken into account—Power of Commissioner to revise assessment.—See *B. SANJEEVA RAO v. COMMISSIONER OF COMMERCIAL TAXES IN MYSORE, BANGALORE* [1963] 14 S.T.C. 267 (Mys.).

Assessment of restaurants—Rejection of accounts on the sole ground that they are not maintained in accordance with rules—Best judgment assessment—Legality—Formula adopted by officer in arriving at turnover—Whether arbitrary.—See *RANGAPPA PANDURANG KAMATH v. STATE OF MYSORE* [1962] 13 S.T.C. 714 (Mys.) pages 6 to 7 *supra*.

—See also *P. NARAYANAPPA v. THE STATE OF MYSORE* [1962] 13 S.T.C. 993 (Mys.) under ACCOUNT BOOKS, pages 7 to 8 *supra*.

—General principle of adding 50 per cent. to the purchase value—Validity—Department should conduct sample surveys of all types of hotels.—*A. P. PYARELAL v. THE STATE OF MADRAS* [1964] 15 S.T.C. 9 (Mad.).

Notice—Failure to submit return—Whether notice should be given to assessee before making best judgment assessment.—If an assessee has not filed any return under section 7(1) of the U.P. Sales Tax Act, 1948, then the position is exactly the same as if he had filed a return which had not been accepted by the assessing authority as correct or complete and he had failed to prove that it was complete and correct in spite of a reasonable opportunity having been given to him. Under sub-section (3) there is no distinction between an assessee who has not filed a return and an assessee who has failed to prove in spite of a reasonable opportunity that the return filed by him was correct and complete. In both cases the assessing authority gets the right to make the best judgment assessment after making such enquiry as he considers necessary and it is not obligatory upon him to give a notice to the assessee before making a best judgment assessment.—*QAMRUDDIN v. COMMISSIONER OF SALES TAX* [1963] 14 S.T.C. 534 (All.).

Issue of notice—"Ordinarily", meaning of.—The use of the word "ordinarily" in rule 32 of the

Central Provinces and Berar Sales Tax Rules, 1947, indicates that it was not the intention to prescribe that a 30 days' notice should be the invariable rule. The assessee was first served with a notice on 31st October, 1955, for appearance on 11th November, 1955, and second notice was given on 17th March, 1956, for appearance on 13th April, 1956. The assessee did not appear on 13th April, 1956, and the officer made a "best judgment assessment" under section 11(4) of the C.P. and Berar Sales Tax Act, 1947: *Held*, that in the circumstances, it could not be said that the petitioner was not given a reasonable opportunity of being heard within the meaning of section 11(4). The assessee well knew when he received the first notice that the Sales Tax Officer was proceeding to assess him and intended to do so. The second notice gave the assessee 27 days' time and that time itself was sufficient compliance with the proviso to sub-section (4) of section 11 and rule 32.—*JAIRAM PARMAR v. SALES TAX OFFICER* [1962] 13 S.T.C. 477 (Bom.).

—Pre-assessment notice should indicate basis on which officer proceeds to make assessment.—See [1963] 14 S.T.C. 231 (Ker.).

Notice proposing to make best judgment assessment—No indication of basis in notice—Validity of assessment—Duty of officer.—When an officer proceeds to make a best judgment assessment there is a duty on his part to make available to the assessee every point or aspect that he proposes to take into account in making the best judgment assessment, and give the assessee opportunity to place all the objections that may be available to him both under law and on facts, regarding the proposal. Where a pre-assessment notice issued to the assessee stated that the books of account produced by the assessee had been rejected on account of certain defects and that the officer was estimating the turnover to the best of his judgment, but it did not, as such, indicate the basis which the officer proposed to adopt for making the best judgment assessment: *Held*, that it could not be said that the assessee had been given fair and full opportunity to place all his points of view regarding the return that he had filed and therefore the order making the best judgment assessment must be set aside.—*NAMADEVA SHENOY v. SALES TAX OFFICER, SPECIAL CIRCLE, CANNANORE* [1963] 14 S.T.C. 159 (Ker.).

—**Rejection of accounts and best judgment assessment without informing assessee that he was doing so**—**Legality—Validity of assessment.**—The assessee submitted his return but failed to produce evidence in support of the return in response to notices issued by the officer. Subsequently the

officer informed the assessee that he proposed to make an estimate of his turnover and asked him to submit his objections, if any, along with all records to substantiate the objections. On the day fixed, the assessee produced his books of accounts and other documents which would support the return, but did not file any objections. The officer however rejected the books of accounts and made a best judgment assessment without indicating to the assessee that he was not accepting the books of account and that he still proposed to make an assessment on a best judgment basis: *Held*, that it was not open to the officer, in the circumstances of this case, to fall back upon making an assessment on a best judgment basis, without giving again an opportunity to the assessee as to why exactly the assessing officer was not prepared to place reliance on the books of account and also to make known to the assessee any further particulars or basis, which he proposed to adopt in relation to the matter of making best judgment assessment in the case. The order, apart from being arbitrary, also suffered from the infirmity of violation of the principles of natural justice. Though the High Court exercising jurisdiction under Art. 226 is not really concerned with the reasons given as such for the rejection of the books of accounts produced by an assessee, they will have to be considered to find out whether the matters mentioned therein are really based upon materials on record and whether the assessee was made aware of that particular circumstance which is used against him in the assessment order.—**ABDUL RAHIMAN HAJI v. SALES TAX OFFICER, HOZDRUG** [1963] 14 S.T.C. 155 (Ker.).

Best judgment assessment for failure to comply with terms of notice—Limitation.—Section 11(4) of the East Punjab General Sales Tax Act, 1948, provided: "If a registered dealer, having furnished returns in respect of a period, fails to comply with the terms of a notice issued under sub-section (2), the Assessing Authority shall within three years after the expiry of such period, proceed to assess to the best of his judgment the amount of the tax due from the dealer": *Held*, (1) that the power to make the best judgment assessment could be exercised only within the period of three years mentioned in the sub-section and the three years had to be counted from the end of each quarter in respect of which the returns had been filed; (2) that where the last of the quarters in respect of which the petitioner filed his returns ended on 31st March, 1956, the Assessing Authority could not proceed to make a best judgment assessment in respect of this quarter after 31st March, 1959.—**MADAN LAL ARORA v. THE EXCISE AND TAXATION OFFICER, AMRITSAR** [1961] 12 S.T.C. 387 (S.C.).

—See also cases cited at page 113 *supra*.

Non-compliance with provisions—Effect—Order of Government based on negotiation between Association and Government—No evidence that assessee was party to that order—Assessment based on order—Validity.—The provisions of sub-section (5) of section 12 of the Orissa Sales Tax Act, 1947, are mandatory and the non-observance of them will render an assessment illegal and invalid. The assessee was a dealer carrying on business in betel leaves. In consequence of certain negotiations between the Betel Leaves Dealers' Association and the Government an order was passed by the Government. The assessee who was registered as a dealer in January, 1949, was assessed for the quarter ending 31st March, 1949, on the basis of his return for that quarter. Simultaneously a best judgment assessment was also made on him for three previous quarters on the basis of the return for the quarter ending 31st March, 1949, without giving him a reasonable opportunity of being heard as required by section 12(5). It was contended for the Sales Tax Authorities that the assessment for the three quarters was valid inasmuch as it was based on the Government order: *Held*, that there being no legal evidence that in fact the assessee was a party to the order passed by the Government, the assessee could not be bound by the said order, and particularly to the extent that the order would override the mandatory provisions of the Act. It could not be said that on account of the order the Sales Tax Officer or the Authorities were exempt from examining individual cases on merits before passing an order of assessment under section 12(5). On account of the non-observance of the mandatory provisions of section 12(5) serious prejudice had been caused to the assessee and the assessment was therefore illegal.—**SITARAM KAMAL PRASAD v. COLLECTOR OF SALES TAX, ORISSA** [1955] 6 S.T.C. 339 (Ori.).

Reasonableness of figure—Whether assessment could be supported.—Where the returns of the petitioner, a sweet-meat seller, were accepted as below Rs. 20,000 for four years out of a period of the previous six years and he was assessed on that basis, and for two years best judgment assessment was made on him on a figure which did not exceed Rs. 22,000: *Held*, that unless there were good grounds for holding that during the relevant year the sales of the petitioner appreciated considerably, an assessment to the best of judgment on a figure of Rs. 35,000 could not be supported.—**TAHLOO SAO BUTTU SAO v. THE STATE OF BIHAR** [1960] 11 S.T.C. (T.D.) 21.

Determination of turnover on the basis of stock—Legality.—In the absence of correct accounts and other data produced by an assessee, the value of the closing stock of the materials is evidence

from which the assessee's turnover can be inferred.—*BASANTLAL & Co. v. COMMISSIONER OF SALES TAX, UTTAR PRADESH* [1963] 14 S.T.C. 395 (All.).

Unregistered dealer—Best judgment assessment—Whether dealer can be assessed as unregistered dealer when application for voluntary registration is pending.—The registration contemplated in section 12(5) of the Orissa Sales Tax Act, 1947, is registration under section 9 and if no application for such registration has been made at any time, there is failure to apply for registration "without sufficient cause" within the meaning of section 12(5). An application for voluntary registration under section 9-A is outside the scope of section 12(5) and therefore the mere fact that an application under section 9-A is pending is immaterial for the applicability of section 12(5). Therefore even if a dealer has applied for voluntary registration under section 9-A, he can be assessed to sales tax under section 12(5) for the period commencing from the date of application for registration till the date on which the certificate is granted under section 9-A.—*HASSAM VALI MOHAMMED v. COMMISSIONER OF SALES TAX, ORISSA* [1963] 14 S.T.C. 150 (Ori.).

Whether validly made.—Following the principles laid down in *Commissioner of Income-tax, Central and United Provinces v. Badridas Ramrai Shop* [1937] (5 I.T.R. 170), *Dhakeswari Cotton Mills Ltd. v. Commissioner of Income-tax, West Bengal* [1954] (26 I.T.R. 775), *Raghubar Mandal Harihar Mandal v. The State of Bihar* [1957] (8 S.T.C. 770) and *K. M. Alikoya & Co. v. State of Kerala* [1961] (12 S.T.C. 567) the High Court came to the conclusion that on the facts the best judgment assessment was validly made and could not be impugned.—*SANKUNNY NAIR v. STATE OF KERALA* [1961] 12 S.T.C. 758 (Ker.).

Rejection of books of account—Omission and understatement of sales—Information obtained from accounts of other dealers—Assessee given extracts of accounts and opportunity to disprove them—Whether sufficient compliance with natural justice.—The Sales Tax Authorities found from the account books recovered from two retail dealers having transactions with the assessee that some of the sales effected by the assessee to the retail dealers were not entered in the assessee's account books and the prices in some other sales were understated in them. The officer brought to the notice of the assessee extracts from the books seized from the retail dealers and the assessee also filed extracts from the books maintained by him relating to the retail dealers. Beyond asserting that his books were correct, the assessee took no other step to disprove the entries made in the books of

the retail dealers. The officer rejected the assessee's account books and made a best judgment assessment under section 12(2) of the Orissa Sales Tax Act, 1947. The assessee contended that he should have been given a chance to confront the retail dealers, that their statements should have been taken in his presence and that in making the best judgment assessment, there was no compliance with natural justice: *Held*, that when extracts of the transactions as disclosed from the account books were made known to the assessee and thus opportunity was given to him to disprove them, there was sufficient compliance with the principles of natural justice. *Raghubar Mandal Harihar Mandal v. The State of Bihar* [1957] (8 S.T.C. 770) and *Dhakeswari Cotton Mills Ltd. v. Commissioner of Income-tax* [1954] (26 I.T.R. 775) followed.—*BHAGWANDAS KHANDELWAL v. STATE OF ORISSA* [1963] 14 S.T.C. 642 (Ori.).

Rejection of accounts—Appellate Tribunal—Duty to find facts.—The Commercial Tax Officer rejected the assessee's accounts for the assessment years 1958-59, 1959-60 and 1960-61 and made simultaneous assessments on the basis of best judgment adopting the five times of the working expenses formula. On appeal the Deputy Commissioner of Commercial Taxes held that the formula was inapplicable for the years 1958-59 and 1959-60 but adopted it for 1960-61 without giving any reasons. The Appellate Tribunal on further appeal only observed that no change or modification was needed regarding the appeal for 1960-61. On a revision to the High Court: *Held*, that the Appellate Tribunal was the final fact-finding authority and it was its duty to go into the facts of the case afresh and decide for itself whether there was justification for rejecting the accounts produced by the assessee, and if the accounts were to be rejected what was the method by which it could assess the assessee on the basis of "best judgment".—*P. KRISHNA RAO v. STATE OF MYSORE* [1964] 15 S.T.C. 312 (Mys.).

Rejection—Right to make best judgment assessment—Whether accounts are unreliable—Question of fact or law—Principles stated.—See *MOHANLAL VISHRAM v. COMMISSIONER OF SALES TAX, M.P.* [1964] 15 S.T.C. 331 (M.P.) page 7 *supra*.

Rejection of account books—Addition to turnover—Whether arbitrary and capricious—Nature of best judgment assessment—Principles stated.—See *M. APPUKUTTY v. SALES TAX OFFICER, KOZHIKODE* [1966] 17 S.T.C. 380 (Ker.).

Rejection of accounts—Hotel business—Estimation of profits—Application of flat rate or formula—Legality—Principles stated—Duty of assessing

officers—Nature of assessment under section 12(2)(b), Mysore Sales Tax Act, 1948.—P. NARAYANAPPA *v.* THE STATE OF MYSORE [1962] 13 S.T.C. 993 (Mys.).

—See also RANGAPPA PANDURANG KAMATH *v.* THE STATE OF MYSORE [1962] 13 S.T.C. 714 (Mys.) under ACCOUNT BOOKS, pages 6-7 *supra*.

Reasonable opportunity must be given.—Before making a best judgment assessment on a dealer under section 9(2) of the Madras General Sales Tax Act, 1939, a reasonable opportunity must be given to the dealer, under the proviso to that sub-section to prove the correctness and completeness of the return submitted by him. Merely giving an opportunity to the dealer calling upon him to appear on a particular day, on which occasion he is really unable to present himself, will not amount to giving him a reasonable opportunity. Where the officer served a notice on the assessee to appear in person on a particular day to prove the correctness of the return, but the assessee replied that he was bedridden and that another opportunity should be given to him to present himself with the accounts, the officer could not, without giving the assessee that opportunity, proceed to assess him to the best of his judgment under section 9(2). Such an assessment would be invalid and the assessee could not be prosecuted under the Act for not paying the tax due on that assessment.—THE PUBLIC PROSECUTOR *v.* K. P. CHANDRASEKHARAN [1957] 8 S.T.C. 6 (Mad.).

—Where a best judgment assessment was made on an assessee under section 9(2)(b) of the Madras General Sales Tax Act, 1939, but it was found that the assessee was not given a reasonable opportunity to produce the accounts, the assessment was not valid and he could not be prosecuted for not paying the tax due on that assessment. *Public Prosecutor v. K. P. Chandrasekharan* [1957] 8 S.T.C. 6 followed.—PUBLIC PROSECUTOR *v.* K. P. CHANDRASEKHARAN (No. 2) [1957] 8 S.T.C. 615 (Mad.).

—The provisions of section 11 of the Bengal Finance (Sales Tax) Act, 1941, are mandatory and every dealer who is assessed under section 11 has a right of being given a reasonable opportunity of being heard by the officer who makes the assessment.—DALMIYA AND CO. *v.* THE STATE OF WEST BENGAL [1952] 3 S.T.C. 443.

Reasonable opportunity—Account books produced before officer not returned to assessee on his request to enable him to file objections—Validity of assessment—Retention of account books by officer—Whether legal.—The petitioner had, in response to a demand of the Sales Tax Officer, produced his

account books before the officer. Subsequently by a notice the petitioner was informed by the officer that the latter proposed to assess him to sales tax in the manner indicated therein. The petitioner requested the officer to return the account books to enable him to file his objections but the officer refused to comply with his request and informed him that either himself or his authorised representative could peruse the accounts at the office during stated hours within a certain period. The petitioner sent a reply in which he denied that he was a dealer and again objected to the proposed assessment. The officer however made an assessment on the petitioner. The petitioner thereupon filed a writ petition: *Held*, (1) that as the account books were not seized by the officer under the provisions of section 17(2A) of the General Sales Tax Act, 1125, by an order recording in writing the reasons for such action, the withholding of the account books from the petitioner and the denial of an opportunity to the petitioner and to his auditor to go through the accounts themselves as desired, and thereafter to urge objections with reference to the accounts amounted to a denial of reasonable opportunity to the petitioner to show cause against the proposed assessment and therefore the assessment must be quashed; (2) that as the withholding of the account books of the petitioner was unjustified, the petitioner's prayer for a writ of *mandamus* directing the officer to return all the account books must be granted.—DEVJI GOKULDAS *v.* SALES TAX OFFICER, KOZHIKODE, AND ANOTHER [1967] 19 S.T.C. 121 (Ker.).

Opportunity of hearing—Assessment without issuing notice—Validity—Rule providing for provisional assessment—Whether ultra vires—Scope of sections 7 and 7A, U.P. Sales Tax Act, 1948.—Section 7A of the U.P. Sales Tax Act, 1948, confers the powers of making provisional assessments for portions of the assessment year and it is not in derogation of the power of assessment provided by section 7 but is subservient thereto. Rule 41(3) when it provides for the making of a provisional assessment order cannot be said to be conferring any independent jurisdiction on the assessing authority which has not already been conferred by the Act and therefore it is not *ultra vires* the powers of the rule-making authority. But under rule 41(3) the Sales Tax Officer cannot pass an arbitrary order. Before determining the turnover to the best of his judgment, it is incumbent upon the officer to afford the assessee a reasonable opportunity of being heard in the matter. The petitioner filed a return showing his turnover for the relevant quarter and applied for time to pay

the admitted tax. The Sales Tax Officer rejected his prayer and asked him to pay the tax immediately. The petitioner did not deposit the admitted tax. Subsequently without any prior notice to the petitioner the officer made a best judgment assessment under rule 41(3): *Held*, that the assessment order violated the principles of natural justice and was on that ground void. Where there is no specific exclusion of an opportunity of hearing, the principles of natural justice would be attracted. *Qamruddin v. Commissioner of Sales Tax, U.P.* [1963] (14 S.T.C. 534) distinguished.—*MAHESHWARI DEVI JUTE MILLS v. THE STATE OF UTTAR PRADESH AND ANOTHER* [1966] 17 S.T.C. 106 (All.).

—*Opportunity of being heard.*—Where a dealer failed to file a return of the first purchase of oil-seeds and to deposit the tax thereon and the Sales Tax Officer thereupon assessed the dealer to purchase tax under rule 41(3) of the U.P. Sales Tax Rules, 1948, without giving any opportunity to the dealer to be heard: *Held*, that the Sales Tax Officer did not act illegally and no question of infringement of natural justice principle arose in the case. *Maheshwari Devi Jute Mills v. The State of Uttar Pradesh* [1966] (17 S.T.C. 106) distinguished.—*SRI KAMALA DAL MILLS v. STATE OF U.P. AND ANOTHER* [1966] 18 S.T.C. 204 (All.).

—*Whether there is denial of opportunity.*—See *RAMDHARI SAHA v. STATE OF WEST BENGAL* [1966] 17 S.T.C. 215 (Cal.).

—*Inference of suppressed sales—Circumstantial evidence—Necessity to give proper opportunity of hearing to assessee—Principle of natural justice.*—An assessment order was primarily based upon an inference of escaped or suppressed transactions of sale of soaps, liable to be taxed, on the circumstantial evidence of a number of collection entries in the cash accounts, and certain slips kept by the employee of the assessee-firm in charge of cash. There was however no evidence that the explanation sought to be offered by the assessee-firm with regard to each one of these items, claimed by the assessee to be based on the internal evidence of the account entries themselves, was seriously considered by the assessing officer in passing the assessment order: *Held*, that the principle of natural justice, *audi alteram partem*, was not substantially observed and therefore the assessment must be struck down.—*MURALI TRADING CO. v. JOINT COMMERCIAL TAX OFFICER, MANNADY, WEST MADRAS* [1967] 19 S.T.C. 221 (Mad.).

Penalty—*Levy of penalty in best judgment assessment cases.*—See **PENALTY** *infra*.

Reasons should be given—Percentage of enhancement—Whether raises any question of law.—To make the proceedings under section 11(4) of the Central Provinces and Berar Sales Tax Act, 1947, an honest effort at assessment, there must be some reasons given for the assessment made; but in revisional proceedings under the Act any minute scrutiny of the reasons given will be out of place. The possibility that another officer might have viewed the case from a different angle by itself does not vitiate the proceedings of the officer who actually handled the case. The contention that a particular figure of percentage enhancement was appropriate and that another figure was not cannot be said to raise any substantial question of law, which is the only ground on which revision can be entertained.—*Haji Dawood Osman of Yeotmal v. The State* [1952] 3 S.T.C. 53.

Failure to afford opportunity to assessee and to indicate material on which turnover is fixed—Whether assessment liable to be set aside.—The general principle enunciated in *Polisetti Subbaraidu and Co. v. Commissioner of Income-tax* [1958] (34 I.T.R. 492) is based on natural justice and would apply to best judgment assessments made under rule 16(3) of the Hyderabad General Sales Tax Rules, 1950. In such a case the assessment order should contain a clear indication of the material on which the turnover is fixed, rates are adopted and amount of tax is determined so that the assessee may know that fact and make his representation, if any, on those matters. Where the order suffers from failure to indicate on what basis the officer assessed the turnover and debited the tax, or where no effective opportunity has been given to the assessee in fixing the quantum, the assessment is bad and is liable to be set aside. Rule 13 of the Hyderabad General Sales Tax Rules, 1950, does not mention any notice; but the assessee should be given an opportunity if the assessing officer proposes to use against the assessee the result of any private enquiries made by him.—*DEWAN HANUMAN MANMOHAN v. THE STATE OF ANDHRA PRADESH* [1960] 11 S.T.C. 473 (A.P.).

Whether officer can rely on private sources of information.—In making a best judgment assessment under section 11(4) of the C.P. and Berar Sales Tax Act, 1947, it is open to the Sales Tax Officer to rely on private sources of information and inquiries made. But whenever the officer wants to act upon any such information, he should disclose it to the assessee and should give him an opportunity to rebut it. Where a best judgment assessment under section 11(4) had been

arbitrarily made without any material to support it and also did not disclose how the extent of sales had been ascertained, the assessment should be set aside. *R.B. Hardutt Mull Jute Mills v. The State of Bihar* [1956] (7 S.T.C. 666) distinguished.—*BHAGWANJIBHAI JAIRAMBHAI v. COMMISSIONER OF SALES TAX, M.P., INDORE* [1961] 12 S.T.C. 502 (M.P.).

Entries in secret accounts maintained by third party—Power of officer to utilize information—Necessity to give opportunity to assessee to cross-examine third party—Arbitrary addition of 25 per cent. on turnover—Legality.—See *M. APPUKUTTY v. THE STATE OF KERALA* [1963] 14 S.T.C. 489 (Ker.) at page 1 *supra*.

Whether can be made in reassessment proceedings.—See under REASSESSMENT.

Whether can be challenged in proceedings under Article 226.—The merits of a best judgment assessment cannot be considered in proceedings under Article 226.—*DALURAM PANNALAL MODI v. ASSISTANT COMMISSIONER OF SALES TAX* [1962] 13 S.T.C. 759 (M.P.).—See also cases digested under WRITS UNDER CONSTITUTION.

Quantum cannot be challenged but legal principles can be challenged.—In an assessment made under section 10(5), Bihar Act, the quantum may not be challenged but the legal basis or the legal principle on which the assessment is based is always open to challenge. It is true that the Sales Tax Officer makes an assessment under sec. 10(5) when the assessee has made default. But this does not mean that the assessment may be made capriciously or in an arbitrary manner. The very phrase "best judgment" implies and imports a legal consideration of the facts relating to the assessment of the particular assessee. It is true that the Sales Tax Officer is not a Court but in making an assessment of sales tax the Sales Tax Officer acts judicially and if he applies a wrong legal principle in making the assessment his decision can be questioned. Even in a case where the assessee fails to submit a proper return, the Sales Tax Officer must proceed in a judicial manner.—*THE STATE OF BIHAR v. THE BENGAL CHEMICAL AND PHARMACEUTICAL WORKS LTD.* [1954] 5 S.T.C. 28 at p. 41 (Pat.).

Best judgment assessment—Whether proper—Board of Revenue—Whether justified in coming to a different conclusion in another year on same material.—See *DEO NARAYAN ISHWAR NARAYAN v. STATE OF BIHAR* [1960] 11 S.T.C. 436 (Pat.).

Best judgment assessment—No appeal against assessment—Assessment set aside by Commissioner and officer directed to make fresh assessment—Proceedings initiated by officer after remand—Whether

fresh proceedings—Limitation.—See *SHRI OM PRAKASH SETH v. ASSESSING AUTHORITY* [1964] 15 S.T.C. 530 (Punj.).

BETEL LEAVES

Green betel leaves—Whether vegetables and exempt.—The word "vegetables" in Notification No. 7567 dated 8th July, 1944, issued by the Bihar Government in the Finance Department does not include green betel leaves called *pan*. They are not exempted by the notification and are taxable articles under the Bihar Sales Tax Act, 1944.—*KOKIL RAM AND OTHERS v. THE PROVINCE OF BIHAR* [1949] 1 S.T.C. 217. (Pat.).

Betel leaves—Whether vegetables.—The exemption granted to betel leaves by item No. 36 of the Second Schedule to the C.P. and Berar Sales Tax Act, 1947, was withdrawn by its deletion by Amendment Act XVI of 1949 and the same exemption cannot be claimed under item No. 6 which refers to vegetables. The term "vegetables" in item No. 6 is to be understood as denoting those classes of vegetable matter which are grown in kitchen gardens and are used for the table. It does not include betel leaves. Amendment Act XVI of 1949, in so far as it amended the Second Schedule by deleting from it item No. 36, was validly enacted and was effective. Taxing measures imposing sales tax on selected commodities and not on others cannot be regarded as discriminating between one dealer and another. There is no discrimination in taxing betel leaves when vegetables are exempted.—*MADHYA PRADESH PAN MERCHANTS ASSOCIATION, SANTRA MARKET, NAGPUR v. STATE OF MADHYA PRADESH (SALES TAX DEPARTMENT) AND OTHERS* [1956] 7 S.T.C. 99 (Nag.).

—Whether vegetables—"Vegetables", meaning of.—"Betel leaves" do not come within the meaning of the expression "green vegetables" as used in the notification of the U.P. Government dated 7th June, 1948. Vegetables as used in the notification, are those varieties of produce of plants which are eaten along with the other principal articles of food like meat and cereals. Betel leaves are not used in that manner and they are taken only after the meals are over and not during the course of the meals. *Kokil Ram v. The Province of Bihar* [1949] (1 S.T.C. 217; A.I.R. 1951 Pat. 367) approved.—*BRAHMANAND v. THE STATE OF UTTAR PRADESH AND ANOTHER* [1956] 7 S.T.C. 206 (All.).

—Whether green vegetables.—By a notification the State Government exempted from the provisions of the U.P. Sales Tax Act, 1948, "green vegetables and fresh fruits": *Held*, that the

expression "green vegetables" means such fresh vegetables as are ordinarily grown in kitchen gardens for use at the table and that betel leaves, which are ordinarily consumed not for their food value but as a masticatory or as an aid to digestion, do not fall under the category of "green vegetables".—**FIRM SHRI KRISHNA CHAUDHRY v. COMMISSIONER OF SALES TAX, U.P., AND ANOTHER** [1956] 7 S.T.C. 742 (All.).

—**Whether vegetables or plants.**—The word "vegetables" has been used in clause (2) of the Schedule to the Rajasthan Sales Tax Act, 1954, in its narrower sense meaning those classes of vegetables which are grown in kitchen gardens to supplement the food and therefore "betel leaves" are not vegetables. The word "plant" in that clause is used by the Legislature in the sense of a living organism which can be planted or grown and "betel leaves" cannot be planted like shrubs or trees. "Betel leaves" are therefore not "plants" and are not exempt under the Rajasthan Sales Tax Act, 1954.—**BHAIRON DAN TOLARAM AND OTHERS v. STATE OF RAJASTHAN AND OTHERS** [1957] 8 S.T.C. 798 (Raj.).

—**Whether vegetables.**—"Vegetables", meaning of—Pan or betel leaf does not come within the meaning of the word "vegetables" as used in item 6 of the Schedule appended to the Bengal Finance (Sales Tax) Act, 1941, and it is therefore not exempt from taxation under the provisions of the said Act.—**DHARMADAS PAUL v. COMMISSIONER OF COMMERCIAL TAXES, WEST BENGAL, AND ANOTHER** [1958] 9 S.T.C. 194 (Cal.).

—**Whether vegetables.**—The word "vegetables" in item 6 of Schedule II of the C.P. and Berar Sales Tax Act, 1947, must be construed not in any technical sense nor from the botanical point of view but as understood in common parlance. It has not been defined in the Act and being a word of everyday use it must be construed in its popular sense meaning "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it". It is therefore to be understood as denoting class of vegetables which are grown in a kitchen garden or in a farm and are used for the table. Consequently "betel leaves" are not vegetables and would not be exempt from sales tax under item 6 of Schedule II of the C.P. and Berar Sales Tax Act, 1947.—**RAMAVATAR BUDHAIPRASAD v. ASSISTANT SALES TAX OFFICER, AKOLA, AND ANOTHER** [1961] 12 S.T.C. 286 (S.C.).

—The word "vegetables" in item 2 of Schedule 2 of the Rajasthan Sales Tax Act, 1954, has been used in its popular sense of vegetables grown in the kitchen garden for use for the table. Therefore "betel leaves" are not vegetables and

are not exempt from taxation. The notification dated 1st April, 1958, which exempted betel leaves from the imposition of sales tax on the condition that the dealer held a valid certificate of exemption on payment of Rs. 10 annual fee, did not contravene Articles 14 and 19(1)(g) of the Constitution.—**RAM BUX CHATURBHUI AND ANOTHER v. STATE OF RAJASTHAN AND OTHERS** [1961] 12 S.T.C. 330 (S.C.).

Pan and betel-nuts.—*Whether exempt only when sold together.*—The mere fact that *pan* and betel-nuts are mentioned in one entry (Entry 52 of the Schedule of Exemptions under Pepsu General Sales Tax Ordinance, 2006) does not mean that they should be exempted only when they are sold together or are sold by *panwalas* and not when sold by grocers. Betel-nuts are exempt from sales tax whether sold with *pans* or separately irrespective of the fact whether they are sold by *panwalas* or grocers.—**GOPI MAL MOTI RAM v. THE STATE** [1956] 7 S.T.C. 281 (F. C. Pepsu).

BHUSHI

Bhushi or rice bran is included in the word "cereal" in item 1 of Schedule III of the Assam Sales Tax Act, 1947, and is therefore exempt from assessment.—**MOHANLAL JOGANI RICE AND ATTA MILLS v. THE STATE OF ASSAM** [1953] 4 S.T.C. 129 (Assam).

BIHAR SALES TAX ACT

Validity of Bihar Sales Tax Act.—The petitioner, a limited company with its registered office in Calcutta, carried on the business of manufacturing and selling certain goods. The petitioner sold the goods not only in West Bengal but also in Bihar and other parts of the Union of India. The goods were despatched from Calcutta by rail, steamer or air against orders which were sent to Calcutta by various customers. The petitioner had no agent or office in the State of Bihar. The Superintendent of Commercial Taxes sent a notice under section 13(5) of the Bihar Sales Tax Act calling upon the petitioner to apply for registration and to submit a return and further informed the petitioner that in case of default best judgment assessment would be made under section 13(5). The petitioner thereupon filed a petition under Article 226 of the Constitution of India for a writ in the nature of *certiorari* or prohibition to quash the proceedings instituted by the Superintendent of Commercial Taxes and contended that the State of Bihar had no jurisdiction to impose sales tax on persons residing outside Bihar, that the provisions of the Bihar Sales Tax Act were inconsistent with the Constitution of India and that the order of the

Superintendent of Commercial Taxes calling upon the petitioner to file a return and to get itself registered as dealer was illegal and without jurisdiction: *Held*, (1) that the officer was acting within his jurisdiction in issuing the notice under section 13(5) and in holding that the petitioner was liable to pay the tax. If the officer made an assessment under section 13(5), the Act provided a right of appeal whereby any error of law might be corrected by the appellate authorities prescribed under the Act. Sections 24 and 25 furnished a complete and effective machinery for appeal and revision against assessments made under the Act and there was, therefore, no warrant for issuing a writ under Article 226 of the Constitution; (2) that the phrase "sale or purchase in the course of inter-State trade or commerce" in Article 286(2) must be construed so as to exclude the particular class of sales or purchases described in the Explanation to Article 286(1). Therefore the amended clauses (c) and (g) of section 2 and section 33 of the Bihar Sales Tax Act are not in conflict with Article 286(2) of the Constitution; (3) that the Bihar Sales Tax Act is in pith and substance not a law with respect to sale of goods but a law imposing tax on the sale of goods and the legislation falls entirely within item 54 of the State List, *viz.*, taxes on the sale or purchase of goods other than newspapers. The Act cannot therefore be said to be invalid under Article 254; (4) that the Bihar Sales Tax Act had been enacted for the purpose of imposing tax on the sale of goods and not for regulating inter-State or intra-State trade and commerce and therefore the Act does not contravene in any way Article 304 of the Constitution; (5) that the Act is also not invalid on the ground that it is extra-territorial in operation. Jurisdiction to tax does not depend on the residence or domicile of the assessee. On the contrary the power of the State to tax extends to all matters properly within the sovereignty of the State. The jurisdiction to tax exists not only in regard to persons or property but also as regards the business done within the State. It is not however necessary for the purpose of jurisdiction that the entire transaction of sale should have taken place within the frontiers of the State. On the other hand, the fact that the goods are delivered in Bihar for consumption constitutes a sufficient *nexus* or territorial connection which confers jurisdiction upon the Bihar Legislature to impose the tax. Explanation to Article 286(1)(a) of the Constitution expressly confers upon the State the power to tax sale or purchase of goods which are actually delivered for consumption inside the State.—*THE BENGAL IMMUNITY CO., LTD. v. STATE OF BIHAR AND*

OTHERS [1953] 4 S.T.C. 43. [There was an appeal to the Supreme Court against this decision. See below.]

Whether conflicts with Sale of Goods Act.—

The Bihar Sales Tax Act is in pith and substance not a law with respect to sale of goods but is a law imposing tax on sale of goods. The Act is entitled as an Act to provide for the levy of a tax on the sale of goods in Bihar. The preamble recites that it is necessary to make an addition to the revenues of Bihar and for that purpose to impose a tax on sale of goods in Bihar. The main provisions of the Act are designed to carry out the purpose stated in the preamble. It is manifest that the legislation falls entirely within item 54 of the State List, *viz.*, taxes on the sale or purchase of goods other than newspapers. It follows that Article 254 has no application to the present case though the Act may incidentally trench to a certain extent upon items 7 and 8 in the Concurrent List. The case falls within the *ratio* of *Megh Raj v. Allah Rakhia* [1947] (74 I.A. 12) in which the Judicial Committee held that section 107 of the Government of India Act, 1935, had no application in a case where the Province could show, as it did in that case, that it was acting wholly within its powers under the Provincial List and was not relying on any power conferred on it by List III of the Concurrent List.—*BENGAL IMMUNITY CO., LTD. v. THE STATE OF BIHAR AND OTHERS* [1953] 4 S.T.C. 43. There was an appeal to the Supreme Court against this decision. See below.

Whether contravenes Article 304.—The Bihar Sales Tax Act professes to be an Act imposing tax on the sale of goods in Bihar. It does not profess to directly tax articles in inter-State trade and commerce. The acts and the transactions on which it directly operates are not inter-State commercial dealings or inter-State transportation. The operation of the Act in no way depends on the inter-State or intra-State nature of the sale transaction. The Act does not differentiate between inter-State sales and intra-State sales. The statute has manifestly been enacted for the purpose of imposing tax on the sale of goods and not for regulating inter-State or intra-State trade and commerce. It is difficult therefore to accept the argument that the Act contravenes in any way Article 304 of the Constitution.—*BENGAL IMMUNITY CO., LTD. v. THE STATE OF BIHAR AND OTHERS* [1953] 4 S.T.C. 43. There was an appeal to the Supreme Court against this decision. See below.

Whether contravenes Article 286(2) and void in its entirety.—The appellant company carrying on

the business of manufacturing and selling certain goods had its registered office and factory in West Bengal. It had neither any agent or manager in Bihar nor any office or godown in that State. The appellant despatched goods from Calcutta by rail, steamer or air against orders accepted by it in West Bengal. The Bihar Sales Tax Authorities were of the view that the sales made by the appellant in West Bengal in which goods had been delivered in Bihar as a direct result of the sale for the purposes of consumption in that State were liable to Bihar sales tax. The Assessing Officer of Bihar therefore issued a notice to the appellant calling upon it to get itself registered as a dealer under the Bihar Sales Tax Act, to submit the return and to deposit the tax due in a treasury in Bihar and further stated that, in default of compliance, he would proceed to make a best judgment assessment. The appellant repudiated its liability to pay the tax and filed a petition under Article 226 of the Constitution. The High Court held that the petition was not maintainable inasmuch as the officer was acting within his jurisdiction in issuing the notice and the appellant had an adequate alternative remedy under the Bihar Sales Tax Act. On appeal to the Supreme Court, the main questions that arose for consideration were: (1) whether the petition was maintainable, (2) whether the Supreme Court had the power to re-examine the majority view in *The State of Bombay v. United Motors (India) Ltd.* [1953] (4 S.T.C. 133) under which the sales made by the appellant were liable to Bihar sales tax under Article 286(1)(a), read with the Explanation, of the Constitution, and (3) whether the sales were not liable to be taxed by virtue of Article 286(2): *Held*, (1) *per curiam*: that the High Court was not right in holding that the petition under Article 226 was misconceived or was not maintainable; (2) that the Supreme Court has, in a proper case, the power to reconsider its own decisions; (3) *per DAS, ACTG. C.J., BOSE, BHAGWATI and JAFER IMAM, J.J. (JAGANNADHADAS, VENKATARAMA AYYAR and SINHA, J.J., dissenting)* that the decision of the Supreme Court in the *United Motors* case [1953] (4 S.T.C. 133) was a recent one where judicial opinion was divided, that the decision was not quite clear and it had encouraged the imposition of tax burdens on the consuming public on an interpretation of the Constitution which was erroneous, that it had given rise to considerable inconvenience and hardship to business people and it was difficult to rectify the error by the legislative process and that therefore in the public interests, the meaning, scope and effect of Article 286 should be re-examined afresh; (4) that, until Parliament by law made in exercise of the powers vested in it

by clause (2) of Article 286 provided otherwise, no State could impose or authorise the imposition of any tax on sales or purchases of goods when such sales or purchases took place in the course of inter-State trade or commerce and the majority decision in *The State of Bombay v. The United Motors (India) Ltd.* [1953] (4 S.T.C. 133) in so far as it decided to the contrary could not be accepted as well-founded on principle or authority. *Per DAS, ACTG. C.J., BOSE and JAFER IMAM, J.J.*—that the charging section of the Bihar Sales Tax Act read with the relevant definitions in that Act cannot operate to tax inter-State sales or purchases. As Parliament has not otherwise provided, the Act, in so far as it purports to tax sales or purchases that take place in the course of inter-State trade or commerce, is unconstitutional, illegal and void. The Act, however, is not *ultra vires* and void in its entirety but is only bad in so far as it seeks to impose sales tax contrary to the provisions of Article 286.—*BENGAL IMMUNITY COMPANY LIMITED v. THE STATE OF BIHAR AND OTHERS* [1955] 6 S.T.C. 446 (S.C.)

Section 2(g)—*Whether ultra vires*.—See the following cases:—

(1) *TATA IRON & STEEL CO., LTD. v. THE STATE OF BIHAR* [1956] 7 S.T.C. 158 affirmed by Supreme Court in [1958] 9 S.T.C. 267.

(2) *DEBIHORA TEA CO., LTD. v. THE STATE OF BIHAR* [1956] 7 S.T.C. 267 affirmed by Supreme Court in [1960] 11 S.T.C. 793.

(3) *ROHTAS INDUSTRIES LTD. v. THE STATE OF BIHAR* [1956] 7 S.T.C. 391.

(4) *TATA IRON & STEEL CO., LTD. v. THE STATE OF BIHAR* [1957] 8 S.T.C. 26 affirmed by Supreme Court in [1960] 11 S.T.C. 793.

(5) *INDIAN CABLE CO., LTD. v. THE STATE OF BIHAR* [1957] 8 S.T.C. 841.

(6) *INDIAN COPPER CORPORATION LTD. v. THE STATE OF BIHAR AND OTHERS* [1958] 9 S.T.C. 204 modified by Supreme Court in [1961] 12 S.T.C. 56.

Bihar Sales Tax Act (VI of 1944)—Vegetables—Exemption—Green betel leaves, whether taxable articles—Whether vegetables and exempted by Notification No. 7567F of 8th July, 1944.—*KOKIL RAM AND OTHERS v. THE PROVINCE OF BIHAR* [1949] 1 S.T.C. 217.

—Sale or agency—Cement manufacturing and marketing companies—Appointment of marketing company as sole sales managers for sale of cement—Cement delivered by manufacturing company to marketing company—Whether sale—Whether relationship, agent and principal—Liability to sales tax.—*ROHTAS INDUSTRIES LTD. v. THE STATE OF BIHAR* [1958] 9 S.T.C. 248 affirmed by Supreme Court. See below.

—Sale or agency—Cement manufacturing and marketing companies—Appointment of marketing company as sole sales manager for sale of cement—Cement delivered by manufacturing companies to marketing company—Whether sale—Whether relationship, agent and principal—Liability to sales tax.—ROHTAS INDUSTRIES LTD. *v. THE STATE OF BIHAR* [1961] 12 S.T.C. 615 (S.C.).

—Sec. 2(c)—Zamindar selling excess of grains and sugar-cane after meeting his requirements—Whether “dealer”—Notice served to register as dealer—Suit for declaration that zamindar is not dealer—Maintainability.—RAJA VISHESHWAR *v. PROVINCE OF BIHAR* [1951] 2 S.T.C. 129.

—Secs. 2(c), (g), 4, 10(5)—“Sale” and “supply” in Bihar Sales Tax Act, 1944, meanings of—Assessee in Bengal despatching goods to person in Bihar—Where sale takes place—Transfer of property in goods outside Bihar—Liability to tax—Jurisdiction of High Court—Power to reframe and resettle issues—Best judgment assessment—Legal principle on which assessment is based—Whether can be challenged—Sale of Goods Act, 1930.—THE STATE OF BIHAR *v. THE BENGAL CHEMICAL AND PHARMACEUTICAL WORKS LTD.* [1954] 5 S.T.C. 28.

—Secs. 2(c), 4, 7(1), 20(4)—Dealer—Certificate of registration—Sale inside and outside State—Major portion outside State—No payment of tax—Right to be registered as dealer—Sale outside State—Whether a separate business—Motive of dealer—Whether relevant.—FATEH CHAND MURALIDHAR *v. THE PROVINCE OF BIHAR* [1952] 3 S.T.C. 293.

—Secs. 4(2), 20(3)—Dealer—No taxable business upto 31-3-1945—Liability to tax for period 31-3-1945 to 30-6-1945—Effect of Section 4(2)—Board of Revenue—Revisional power—Power to go into questions of fact.—BANARSI LAL *v. THE PROVINCE OF BIHAR* [1952] 3 S.T.C. 178.

—Secs. 5 (2) (a) (ii) and (v), 7, 21—Exemption—Goods manufactured in Bihar—Despatch to company in Calcutta with one place of business in Bihar—“Sale”, meaning of—Nature of liability under Bihar Sales Tax Act, 1944—Test for application of section 5(2)(a)(v)—Commissioner’s finding—Finality—“Registered dealer”, meaning of—Interpretation of taxing statutes—Reference—Nature of jurisdiction of High Court—Tax on first sale by manufacturer—Validity—Whether an excise duty.—TOBACCO MANUFACTURERS (INDIA) LTD. *v. THE STATE OF BIHAR* [1950] 1 S.T.C. 282.

—Sec. 5 (2) (a) (ii) and (v)—Turnover—Claim for deduction under section 5(2)(a)(ii) and (v)—Principles to be followed.—PRINTERS (INDIA) LTD. *v. THE PROVINCE OF BIHAR* [1953] 4 S.T.C. 77.

—Secs. 5(2) (a) (ii), 21(3)—Deductions—Sales to registered dealer—Sales of ropeways to collieries—Whether ropeways directly used in raising of coal—Question of fact—Whether sales exempted—Deduction of labour charges in installing ropeways—Necessity to make specific claim before Sales Tax Authorities—High Court’s power to consider points not raised before Sales Tax Authorities and Board of Revenue—Bihar Sales Tax Rules, R. 4.—KUMARDHUBI ENGINEERING WORKS LTD. *v. THE STATE OF BIHAR* [1952] 3 S.T.C. 274.

—Secs. 5(2)(a)(v), 21(1)—Reference—Deduction under section 5(2)(a)(v) disallowed on wrong assumption of facts—Whether question of law is involved—Right to full deduction.—THE STATE OF BIHAR *v. KATIHAR JUTE MILLS LTD.* [1956] 7 S.T.C. 177.

—Sec. 7—See Sections 2 (c) and 5 (2).

—Sec. 10—Computation of taxable turnover—Deduction for non-taxable goods—Rule 36(1), Bihar Sales Tax Rules, 1944—Whether *ultra vires* Bihar Government—Scope of the rule—Provisions, whether mandatory—Award of cost by Board of Revenue and officers subordinate to it in sales tax cases—Legality—Bihar Sales Tax Rules, 1944, Rule 36(1).—THE PROVINCE OF BIHAR *v. JOKHI RAM RAM PRASAD AND ANOTHER* [1948] 1 S.T.C. 202.

—Sec. 10(2) (b), (4)—Failure to submit return—Unreliable accounts—Best judgment assessment—Principles stated—Scope of section 10(2)(b) and (4)—Indian Income-tax Act (XI of 1922), sections 13, 23 (3), (4).—MESSRS RAGHUBAR MANDAL HARIHAR MANDAL *v. THE STATE OF BIHAR* [1952] 3 S.T.C. 65.

—Sec. 10(2) (b), (4)—Failure to submit return—Unreliable accounts—Assessment based on estimate—Principles stated—Reference—Nature of jurisdiction of High Court—Scope of section 10(2)(b)—Indian Income-tax Act (XI of 1922), Section 23 (3), (4).—RAGHUBAR MANDAL HARIHAR MANDAL *v. THE STATE OF BIHAR* [1957] 8 S.T.C. 770 (S.C.).

—Sec. 10(3)—Failure to produce genuine account books—Best judgment assessment—Legality—Average sale per day—Materials to justify finding—Question of fact or law—Jurisdiction of High Court—Bihar Sales Tax Act

(XIX of 1947), sections 13(3), 25(3).—DOMA SAHU KISHUN LAL SAO *v.* STATE OF BIHAR [1951] 2 S.T.C. 37.

—Sec. 10(4)—Failure to file return and to produce genuine books of account—Assessment under section 10(4) based on previous quarters—Legality.—RAMDHAN LAL SHARAFF *v.* THE PROVINCE OF BIHAR [1952] 3 S.T.C. 323.

—Sec. 10(5), (6)—Best judgment assessment—Imposition of penalty—Hindu undivided family carrying on business at one place starting business at another place under different name—Branch not registered under Act—Best judgment assessment under section 10(5) and imposition of penalty under section 10(5)—Legality—Bihar Sales Tax Rules, 1944, Rr. 6, 7.—MIRZAMUL PRABHU DAYAL *v.* THE STATE OF BIHAR [1957] 8 S.T.C. 508.

—Sec. 10(5)—See also Section 2(c).

—Secs. 10(6), proviso, 20—Assessment—Limitation provided in proviso to section 10(6)—Whether applies to fresh assessment directed by appellate or revisional authority—Whether affects power of review under section 20(4).—GAJO RAM BASANT RAM AND ANOTHER *v.* THE STATE OF BIHAR [1956] 7 S.T.C. 248.

—Sec. 20—Appeal to Commissioner—Hearing date fixed—Dismissal of appeal for default without deciding case on merits—Legality—Bihar Sales Tax Rules, Rr. 57, 58.—MD. AMIN BROTHERS *v.* THE STATE OF BIHAR [1951] 2 S.T.C. 63.

—Sec. 20(1).—Appeal—Limitation—Period of sixty days from date of assessment order in filing appeal—Duty of officers—Whether delay can be condoned.—RAMBHAGAT SAO JANKI SAO *v.* THE PROVINCE OF BIHAR [1946] 1 S.T.C. 145.

—Sec. 20(3)—See Section 4(2).

—Sec. 20(4)—See Section 2(c).

—Sec. 21—Revision to Board in respect of assessment for quarters 31-12-45 to 31-3-47—Rejection by Board—Application to state case within ninety days of passing of order—Reference to High Court—Whether case governed by section 25 of Act of 1947—Application whether time-barred—Time requisite for obtaining copy of order—Whether should be excluded—Competency of reference—Bihar Sales Tax Act, 1947, section 25.—DOMA SAO KISHUN LAL *v.* THE STATE OF BIHAR [1952] 3 S.T.C. 167.

—Sec. 21—Supreme Court—Decision on reference under section 21(3), Bihar Sales Tax Act—Whether “judgment”—Whether arises out of “civil proceeding”—Application for leave to

appeal to Supreme Court—Maintainability—Reference under section 21(3)—Difference of opinion—Reference to third Judge—Legality—Constitution of India, Article 133—Civil Procedure Code, 1908, sections 109, 110—Letters Patent (Patna High Court), Clauses 28, 31—Indian Income-tax Act (XI of 1922), section 66.—TOBACCO MANUFACTURERS (INDIA) LTD. *v.* THE STATE [1951] 2 S.T.C. 73.

—Sec. 21(1), (2) and (3)—Reference—Revision to Board in respect of assessment for quarters 1-7-1946 to 31-3-1947—Rejection by Board—Application to state case beyond sixty, but within ninety days of passing of order—Refusal to refer—Application to High Court—Reference under section 21(3)—Competency—Whether High Court can refuse to answer questions—Bihar Sales Tax Act, 1947, section 25.—RAMJI SOMAN CHOUDHARY *v.* THE STATE OF BIHAR [1953] 4 S.T.C. 83.

—Sec. 21(1) and (3)—See also Section 5.

—Sec. 21(3)—Reference—Order of High Court dismissing application to direct Board of Revenue, Bihar, to state case—Appeal to Federal Court—Maintainability—Nature of jurisdiction of High Court—Letters Patent (Patna High Court), Clause 31.—SETH PREMCHAND SATRAMDAS *v.* THE STATE OF BIHAR [1950] 1 S.T.C. 313.

—Sec. 26—Rules framed under, Rule 36—Whether *ultra vires*.—BUJHAWAN SAH RAMNATH *v.* PROVINCE OF BIHAR [1946] 1 S.T.C. 144.

—Sec. 26—Rules framed under, Rule 36—Whether *ultra vires* Bihar Government.—BRIJRAJ LAL BIDASARIA *v.* THE PROVINCE OF BIHAR [1946] 1 S.T.C. 147.

—Sec. 26—Rules framed under, Rule 36—Sales tax—Determination of taxable turnover—Rule 36 whether *ultra vires*—Scope of the rule.—RAM PRATAP KAMALIA *v.* THE PROVINCE OF BIHAR [1946] 1 S.T.C. 148.

—Sec. 26—Rules framed under, Rule 36(1)—Petty dealer—Sale of controlled goods in small lots—Failure to issue cash memos—Whether gross turnover can be taken as taxable turnover.—RAMASHIS CHOWDHURY *v.* THE PROVINCE OF BIHAR [1946] 1 S.T.C. 149.

—Sec. 26—Rules framed under, Rule 36(1)—Cash or credit memo volumes containing entries about sales of taxable and tax-free goods—Admissibility in evidence—Duty of assessing authority.—SARJOO LAL RAMCHANDRA LAL *v.* THE PROVINCE OF BIHAR [1946] 1 S.T.C. 151.

—Validity of rule 36—See also Section 10.

Bihar Sales Tax Act (XIX of 1947)—Assessment and recovery—Assessment of Hindu undivided family—Death of *karta*—Proceedings for recovery of tax by arrest and detention in jail of junior members—Legality—Bihar and Orissa Public Demands Recovery Act, 1914, Secs. 15, 46—Indian Income-tax Act (XI of 1922), Secs. 25A(2), 46(2).—**PRAHLAD RAI BAIROLIYA AND OTHERS v. UNION OF INDIA AND ANOTHER** [1956] 7 S.T.C. 784.

—Appeal—Supreme Court—Special leave under Article 136—When can be granted—Application for reference of several questions of law—Board of Revenue referring one question and High Court answering it against appellant—Appeal to Supreme Court against decision of Board—Maintainability.—**BALLABHDAS AGRAWAL v. THE STATE OF BIHAR** [1962] 13 S.T.C. 278.

—Building contracts—Imposition of sales tax on supply of materials—Sales Tax Authorities must consider nature of contract.—**M. L. DALMIYA AND COMPANY LIMITED v. SUPERINTENDENT OF COMMERCIAL TAXES, JAMSHEDPUR, AND OTHERS** [1958] 9 S.T.C. 645.

—Exemption—Country liquor—*Mritasanjibani Sura*—Whether medicated wine or country liquor—Whether liable to sales tax—Bihar Sales Tax Act (XIX of 1947)—Notification No. STGL-60/51-4280 F.T. dated 2nd April, 1951.—**DR. NARESH CHANDRA GHOSE AND ANOTHER v. THE STATE OF BIHAR AND ANOTHER** [1959] 10 S.T.C. 50.

—Exemption—Handmade *biris*—Whether included in definition of tobacco and exempt from payment of sales tax—Additional Duties of Excise (Levy and Distribution) Act, 1957—Bihar Sales Tax Act (XIX of 1947)—Notification No. STGL-P-601/57 18422 F.T. dated 14th December, 1957.—**THE SINGHBHUM TOBACCO AND BIRI MERCHANTS' ASSOCIATION AND ANOTHER v. ASSISTANT SUPERINTENDENT OF SALES TAX, CHAIBASA, AND ANOTHER** [1960] 11 S.T.C. 808.

—Photographer—Taking of photographs and selling printed copies of them to customers—Liability to sales tax—Bihar Sales Tax Act (XIX of 1947).—**M. GHOSH v. THE STATE OF BIHAR** [1961] 12 S.T.C. 154.

—Sales tax—Company—Winding up—When sales tax becomes due and payable and when is it entitled to preferential payment—Difference between income-tax and sales tax—Companies Act (1 of 1956), Section 530(1).—*In the matter of BIHAR BOLTS AND RIVETS AND ENGINEERING WORKS LTD. (IN LIQUIDATION)* [1959] 10 S.T.C. 578.

—Writs under Constitution—Failure to avail effective remedy under Sales Tax Act—Application under Article 226, Constitution of India—Maintainability—Power of High Court to entertain question of fact raised for first time.—**RAJA TRADERS AND RAJESHWAR BROTHERS v. THE STATE OF BIHAR AND OTHERS** [1959] 10 S.T.C. 601.

—Sec. 2(b), (c), (d), (g), (h)—Sale of goods—Building contracts—Construction of coke oven battery—Materials supplied—Liability to sales tax—Validity of provisions—Maintainability of application under Article 226—Constitution of India, Article 226.—**COKE OVEN CONSTRUCTION COMPANY (PRIVATE) LTD. v. THE STATE OF BIHAR AND OTHERS** [1958] 9 S.T.C. 639 reversed by Supreme Court in 12 S.T.C. 449 see below.

—Sec. 2(b), (c), (d), (g), (h)—Sale of goods—Building contracts—Contract for installation of coke oven battery and by-products plant for an all inclusive price—Whether contract entire and indivisible—Materials supplied—Liability to sales tax.—**CARL STILL G. M. B. H. AND ANOTHER v. THE STATE OF BIHAR AND OTHERS** [1961] 12 S.T.C. 449 (S.C.).

—Secs. 2(c), (g), 4, 33—Restrictions on States' power to levy sales tax—Sale outside State—Inter-State trade—Scope of Article 286(2) and Explanation to Article 286(1)—Validity of Bihar Sales Tax Act, 1947—Sections 2(c), (g) and 33—Whether conflict with Article 286(2)—Act, whether repugnant to Sale of Goods Act and invalid under Article 254(1)—Whether conflicts with Article 304—Whether extra-territorial in operation—Resident of Calcutta—Goods sent to customers in Bihar—Notice under section 13(5) to submit return—Application under Article 226 for quashing proceeding—Maintainability—Constitution of India, 1950, Articles 226, 254, 286 and 304.—**THE BENGAL IMMUNITY CO. LTD. v. STATE OF BIHAR AND OTHERS** [1953] 4 S.T.C. 43. On appeal to Supreme Court—See below.

—Sale outside State—Inter-State trade or commerce—Scope of Article 286(1)(a), Explanation and Article 286(2)—Delivery of goods for purposes of consumption—Right of delivery State to tax inter-State sales—Whether Article 286(2) bans taxing such sales—Supreme Court—Power to reconsider previous decision in *United Motors* case—Whether decision can be overruled—Bihar Sales Tax Act—Taxation of non-residents in respect of sales falling under Explanation to Article 286(1)(a)—Validity—Whether extra-territorial in operation and *ultra vires*—"Actual delivery"—"All Courts" in Article 141—Meanings of—Notice on non-resident to submit return

and deposit tax—Application under Article 226 challenging validity of Act—Maintainability—Constitution of India, Articles 286, 19(1)(g), 141, 226, 245, 246, 304.—*THE BENGAL IMMUNITY COMPANY LIMITED v. THE STATE OF BIHAR AND OTHERS* [1955] 6 S.T.C. 446 (S.C.).

—Sale outside State—Inter-State sales—Applicability of Sales Tax Continuance Order, 1950, and Sales Tax Laws Validation Act, 1956—Liability to tax—Sales tax legislation—Applicability of doctrine of nexus—Passing of title and delivery of goods within State—Whether constitute sufficient territorial nexus—Source of States' power of taxation—Constitution of India, Articles 246(3), 286(1)(a) and (2)—Sales Tax Continuance Order, 1950—Sales Tax Laws Validation Act, 1956.—*TOBACCO MANUFACTURERS (INDIA) LIMITED v. COMMISSIONER OF SALES TAX, BIHAR AND ANOTHER* [1956] 7 S.T.C. 745 affirmed by Supreme Court in 12 S.T.C. 87.

—Sales outside Bihar—Inter-State sales—Applicability of Sales Tax Continuance Order, 1950—Liability to tax—Money paid as tax under mistaken notion of law—Whether refundable—Constitution of India, Article 286(1)(a), (2)—Sales Tax Continuance Order, 1950—Indian Contract Act, 1872, Secs. 21, 72.—*INDIAN STEEL AND WIRE PRODUCTS LTD. v. THE SUPERINTENDENT OF COMMERCIAL TAXES, SINGHBHUM CIRCLE AND OTHERS* [1956] 7 S.T.C. 776.

—Sales outside State—Inter-State sales—Section 2(g), Bihar Sales Tax Act—Whether *ultra vires* Legislature—Goods delivered outside Bihar after 26th January, 1950—Liability to tax—Constitution of India, Article 286(1)(a), (2).—*INDIAN CABLE CO., LTD. v. THE STATE OF BIHAR* [1957] 8 S.T.C. 841.

—Sale in the course of export—Sale outside State—Inter-State trade—Scope of clauses (1)(a), (1)(b) and (2) of Article 286—Contract of sale and despatch of goods to places outside State for export outside India—Applicability of Article 286(1)(a), (1)(b) or (2)—Whether exempt from tax—Constitution of India [prior to its amendment by Constitution (Sixth Amendment) Act, 1956], Article 286—Sales Tax Continuance Order, 1950—Sales Tax Laws Validation Act (7 of 1956).—*MAHADEO RAM BALI RAM v. THE STATE OF BIHAR* [1958] 9 S.T.C. 173.

—Sales outside State—Nature of liability to tax for periods 1-4-1949 to 25-1-1950 and 26-1-1950 to 31-3-1950—Validity of section 2(g)—Scope of exemption under Article 286(1)(a), Constitution of India, 1950, Article 286(1)(a).—*INDIAN COPPER CORPORATION LTD. v. STATE OF*

BIHAR AND OTHERS [1958] 9 S.T.C. 204 modified by Supreme Court, see below.

—Secs. 2, 33—Sales outside State—Explanation sales—Claim for exemption—Whether assessee should prove that goods were actually consumed in State of first destination—Sales in which goods were delivered outside State but not for consumption in State of delivery—Whether outside all States in India—State in which property in goods passes—Whether alone can tax—Right to tax sale relying on real territorial nexus—Constitution of India, 1950 [prior to its amendment by Constitution (Sixth Amendment) Act, 1956], Article 286(1)(a), Explanation, (1)(b), (2), (3).—*INDIA COPPER CORPORATION LTD. v. THE STATE OF BIHAR AND OTHERS* [1961] 12 S.T.C. 56 (S.C.).

—(as amended by Bihar Finance Act, 1950), Sec. 2(c)—Dealer—Casual sales—Dealer in coal—Casual sale of machinery—Liability to sales tax.—*COMMISSIONER OF SALES TAX, BIHAR v. BASTA COLLA COLLIERY CO., LTD.* [1968] 21 S.T.C. 454.

—Secs. 2(c), (g), 4—"Sale", "supply"—Meanings of—Registration as dealer—Supply of goods on commission basis—Liability to sales tax.—*KARAMCHAND THAPAR AND BROTHERS v. THE STATE OF BIHAR* [1956] 7 S.T.C. 58.

—Secs. 2(c), (g), 4(1), (2)—Contract to supply dehydrated meat to Government—Plant and machinery provided by Government—Goat meat supplied by another contractor for which assessee paid price—Government charged by assessee on fixed scale which included cost of materials and labour—Assessee entrusting production to partnership but continuing to be responsible to Government—Whether assessee "dealer"—Whether transaction "sale"—Liability to sales tax for period October, 1944, to March, 1945, although business was started in April, 1944.—*MOHAMMAD AMIN BROTHERS LTD. v. THE PROVINCE OF BIHAR* [1951] 2 S.T.C. 55.

—Sec. 2(d), (g), (i)—"Goods", meaning of—Indian Jute Mills Association—Allotment of "loom hours" to member—Sale of "loom hours" by member—Whether taxable.—*THE STATE OF BIHAR v. RAMESHWAR JUTE MILLS LTD.* [1953] 4 S.T.C. 179.

—Sec. 2(g)—Sale outside State—Assessment on basis of return—Claim that sales fall under Article 286(1) and therefore exempt—Application under Article 226 challenging validity of second proviso to section 2(g) and for prohibition—Maintainability—Constitution of India, 1950, Articles 226, 286.—*DIAMOND COAL CO. LTD. v. STATE OF BIHAR AND ANOTHER* [1953] 4 S.T.C. 99.

—Sec. 2(g)—“Sale”, meaning of—Transfer of property in Bihar—Whether sufficient—Whether goods should also remain in Bihar when contract of sale is entered into—Supply of wooden sleepers to railway—Sleepers manufactured outside Bihar brought to Bihar and despatched to places outside Bihar by rail after approval of officer—Whether title to goods passes—Indian Sale of Goods Act (III of 1930), Secs. 23, 24.—BIRENDRA-NATH GUHA AND COMPANY *v.* THE STATE OF BIHAR [1954] 5 S.T.C. 273.

—Secs. 2(g), 4(1), 14A—Provincial Legislature—Power to impose sales tax—Doctrine of *nexus*—Whether applicable to sales tax legislation—Section 2(g), whether *ultra vires* Legislature—Tax on sale of goods manufactured in Bihar although transaction of sale is concluded outside State—Legality—Nature of tax—Whether excise duty—Section 16 of Act VI of 1949 making section 4(1) retrospective—Validity—Sales tax realised from customers—Whether can be included in turnover of dealer—Assessment to sales tax for periods prior to Constitution—Disposal of appeal after Constitution—Whether appeal should be decided by applying Article 286—Nature of liability to sales tax—Bihar Sales Tax (Amendment) Act (VI of 1949), section 16—Constitution of India, Article 286—Government of India Act, 1935, Section 100(3), Sch. VII, List II, Item 48.—TATA IRON AND STEEL CO., LTD. *v.* THE STATE OF BIHAR [1956] 7 S.T.C. 158 affirmed by Supreme Court in 9 S.T.C. 267.

—Sec. 2(g), (h)—Provincial Legislature—Power to impose sales tax—Doctrine of *nexus*—Whether applicable to sales tax legislation—Section 2(g), whether *ultra vires* Legislature—Tax on sale of goods manufactured in Bihar although transaction of sale is concluded outside State—Legality—Sales tax realised from customers—Whether can be included in turnover of dealer—Railway freight collected by dealer—Whether can be included in turnover—Constitution of India, 1950—Government of India Act, 1935.—TATA IRON & STEEL CO., LTD. *v.* THE STATE OF BIHAR [1957] 8 S.T.C. 26 affirmed by Supreme Court in 11 S.T.C. 793.

—Sec. 2(g), second proviso and section 4(1)—Legislative powers—Bihar Legislature—Validity of section 4(1) read with section 2(g), second proviso—Tax imposed by clause (ii) of second proviso—Whether a duty of excise or tax on sale of goods—Doctrine of *nexus*—Applicability to sales tax legislation—Presence of goods or production or manufacture inside State—Whether constitutes sufficient *nexus*—Nature of sales tax—Whether can be imposed retrospectively—Government of India Act, 1935, Section 100(3),

List II, Entry 48—Indian Sale of Goods Act (III of 1930).—THE TATA IRON & STEEL CO., LTD. *v.* THE STATE OF BIHAR [1958] 9 S.T.C. 267 (S.C.).

—Sec. 2(g)—Provincial Legislature—Power to impose sales tax—Doctrine of *nexus*—Whether applicable to sales tax legislation—Section 2(g), whether *ultra vires* Legislature—Tax on sale of goods manufactured in Bihar although transaction of sale is concluded outside State—Legality—Bihar Sales Tax (Amendment) Act (VI of 1949)—Government of India Act, 1935, Section 100(3), Sch. VII, List II, Item 48.—DEBIGHORA TEA CO., LTD. *v.* THE STATE OF BIHAR [1956] 7 S.T.C. 267 affirmed by Supreme Court in 11 S.T.C. 793.

—Sec. 2(g)—Despatches of goods addressed to self—Whether sales.—GREAT INDIA RICE AND OIL MILLS *v.* STATE OF BIHAR [1957] 8 S.T.C. 341.

—Sec. 2(g)—Despatch of goods outside Bihar addressed to self—Where sales take place—Liability to sales tax—Validity of section 2(g)—Sale of Goods Act, 1930, Section 30.—DEBU LAL GUDARMAL *v.* STATE OF BIHAR [1957] 8 S.T.C. 583.

—Sec. 2(g)—“Sale”, meaning of—“Hire-purchase or other instalment system of payment”—Agreement for hire or hire-purchase system—Distinction—Transaction between assessee and engineering contractors—Whether hire-purchase system—Liability to sales tax.—DAMODAR VALLEY CORPORATION *v.* THE STATE OF BIHAR [1957] 8 S.T.C. 47 affirmed by Supreme Court see below.

—Sec. 2(g)—Sale—Hire-purchase agreement—Construction of dam—Supply of machineries by Damodar Valley Corporation to contractors—Whether transaction contract of hiring or sale on deferred payments with an option to repurchase—Liability to sales tax.—DAMODAR VALLEY CORPORATION *v.* THE STATE OF BIHAR [1961] 12 S.T.C. 102 (S.C.).

—Sec. 2(g), second proviso—Sale of goods—Despatch of sugar to different States under orders of Sugar Controller made under Sugar and Sugar Products Control Order, 1946—Whether sales take place in Bihar—Liability to sales tax under Bihar Sales Tax Act—When contract of sale is complete—Indian Sale of Goods Act (III of 1930), Sec. 23—Indian Contract Act (IX of 1872), Secs. 5, 8.—COMMISSIONER OF SALES TAX, BIHAR *v.* NEW INDIA SUGAR MILLS, DARBHANGA [1959] 10 S.T.C. 74 reversed by Supreme Court in 14 S.T.C. 316.

—Sec. 2(g), second proviso—Sale of goods—Despatches of sugar to different States under orders of Sugar Controller—Liability to sales tax under Bihar Sales Tax Act.—COMMISSIONER OF SALES TAX, BIHAR *v.* CHAMPARAN SUGAR COMPANY LTD. [1959] 10 S.T.C. 196.

—Secs. 2(g), 4(1), 14A—Provincial Legislature—Power to impose sales tax—Section 2(g), whether *ultra vires* Legislature—Imposition of tax on sale of goods manufactured in Bihar although transaction of sale is concluded outside State—Legality—Section 16 of Act VI of 1949 making section 4(1) retrospective—Validity—Sales tax realised from customers—Whether can be included in turnover of dealer—Bihar Sales Tax (Amendment) Act (VI of 1949), section 16—Constitution of India, 1950—Government of India, Act, 1935.—ROHTAS INDUSTRIES LTD. v. THE STATE OF BIHAR [1956] 7 S.T.C. 391.

—Secs. 2(g), 25(1)—“Manufacture”, meaning of—Process of mining mica—Whether manufacture of goods—Application to Board signed by Commissioner—State of Bihar mentioned as petitioner—Competency of reference.—THE STATE OF BIHAR v. CHRESTIEN MICA INDUSTRIES LTD. [1956] 7 S.T.C. 626 affirmed by Supreme Court see below.

—Sec. 2(g)—“Production”—Meaning of—Process of mining mica—Whether production of mica.—CHRESTIEN MICA INDUSTRIES LTD. v. THE STATE OF BIHAR AND ANOTHER [1961] 12 S.T.C. 150 (S.C.).

—Secs. 2(g), 4(1)—Legislative powers—Bihar Legislature—Validity of section 4(1) read with section 2(g), second proviso—Doctrine of nexus—Presence of goods at the time of contract of sale or production or manufacture inside State—Whether constitutes sufficient nexus—Government of India Act, 1935, section 100, List II, Entry 48—Indian Sale of Goods Act (III of 1930).—BHARAT SUGAR MILLS LTD. AND OTHERS v. THE STATE OF BIHAR AND ANOTHER [1960] 11 S.T.C. 793 (S.C.).

—Sec. 2(g)—See also [1963] 14 S.T.C. 316 (S.C.).

—Secs. 2(g), 33—See also [1963] 14 S.T.C. 375 (S.C.).

—Secs. 2(h), 5(2) (a) (i), 10(2)(a), (3)—Notice under section 10(2)(a)—Accounts produced unreliable—Best judgment assessment under section 10(3)—Legality—Sales tax—Whether can be included in turnover—Failure to keep accounts in accordance with rule 36(1) of Bihar Sales Tax Rules—Effect—Bihar Sales Tax Rules, 1944, Rule 36(1).—KANIRAM JANKI DAS v. THE STATE OF BIHAR [1952] 3 S.T.C. 230.

—Secs. 2(h), 14A—Turnover—Sales tax realised by registered dealer from customer—Whether can be included in turnover of dealer—Bihar Sales Tax (Amendment) Act (VI of 1949).—TINPLATE COMPANY OF INDIA LTD. v. THE STATE OF BIHAR [1957] 8 S.T.C. 532.

—Secs. 2(h), (i), 25—Turnover—Sale price—Excise duty—Tobacco dealer—Excise duty paid by customers direct to Government but not included in cash memos issued by dealer—Whether part of sale price for tobacco—Liability to sales tax—Failure to avail effective remedy under Sales Tax Act—Application under Article 226 of Constitution of India—Maintainability—Constitution of India, Article 226.—DAYABHAI GOKULBHAI PATEL v. THE STATE OF BIHAR [1959] 10 S.T.C. 483.

—Sec. 4—Chota Nagpur—Notification extending Act with retrospective effect—Validity of assessment of sales tax—Bihar Sales Tax (Amendment) Act (VI of 1949), Sec. 16.—DARSAN RAM v. THE STATE OF BIHAR [1957] 8 S.T.C. 535.

—Secs. 4, 5, 13 (2) (a), (b)—Notice—Failure to issue notice under section 13(2)(a)—Validity of assessment—Jurisdiction to assess and liability to pay tax.—HARMUKH RAI JAIRAM DAS v. THE STATE [1952] 3 S.T.C. 153.

—Secs. 4, 5, 13(5)—Assessment—Unregistered dealer—Best judgment assessment under section 13(5)—Whether dealer should have wilfully failed to apply for registration—Scope of section 13(5)—Jurisdiction to assess and liability to pay tax.—SHRI PARWATIJI MILLS v. THE STATE OF BIHAR [1957] 8 S.T.C. 653.

—Sec. 4—See also Section 2.

—Sec. 4(1)—See under Section 2(g).

—Sec. 5(2)(a)(i)—See Section 2(h).

—Sec. 6—Exemption—Green vegetables—Sugar-cane—Whether green vegetable and exempt from taxation—Notification No. 9884-F.T. dated 28th August, 1947.—MOTIPUR ZAMINDARY COMPANY LIMITED v. THE STATE OF BIHAR [1959] 10 S.T.C. 413 affirmed by Supreme Court see below.

—Sec. 6—Exemption—Sugar-cane—Whether green vegetable and exempt from taxation—Amendment to definition of “dealer” by Finance Act, 1950—Whether temporary amendment—Whether requires President’s assent—Notification No. 9884-F.T. dated 28th August, 1947—Bihar Annual Finance Act, 1950.—MOTIPUR ZAMINDARY CO. (PRIVATE) LTD. v. THE STATE OF BIHAR AND ANOTHER [1962] 13 S.T.C. 1 (S.C.).

—Secs. 9, 13(5), 24(5)—Application for registration—Assessment—Review of order—Granting of certificate of registration on the basis of application for registration—Subsequent discovery that assessee is carrying on business from earlier period—Assessment to tax under

sec. 13(5) for that period—Whether amounts to review of order granting registration—Sanction of Commissioner, whether necessary—Bihar Sales Tax Rules, 1949, Rule 39(3).—COMMISSIONER OF SALES TAX, BIHAR *v.* AYURVEDA PRACHAR SAMITI [1961] 12 S.T.C. 701.

—Sec. 10(2) (a), (3)—See Section 2(h).

—Sec. 13(2) (a), (b)—See Section 4.

—Secs. 13(3), 25(2) (b)—Best judgment assessment—Whether proper—Board of Revenue—Whether justified in coming to a different conclusion in another year on same material—Booklet and slips recovered on inspection—Whether belong to assessee—Question of fact.—DEO NARAYAN SINGH ISHWAR NARAYAN SINGH *v.* THE STATE OF BIHAR [1960] 11 S.T.C. 436.

—Secs. 13(3), 14(2), (3a)—Best judgment assessment—Non-production of stock book and ledger account—Assessment to best of judgment under section 13(3)—Legality—Imposition of penalty for non-payment of admitted tax—Clerical mistake in mentioning section in notice—No prejudice to assessee—Whether imposition of penalty illegal—Bihar Sales Tax Act (XIX of 1947), Secs. 13(3), 14(2), (3a).—COMMISSIONER OF SALES TAX, BIHAR *v.* GANGA PRASAD JAI PRAKASH [1961] 12 S.T.C. 716.

—Sec. 13(3)—See Bihar Sales Tax Act, 1944, Sec. 10(3).

—Sec. 13(4)—Best judgment assessment—Principles stated—Firm—Whether bogus created for purposes of evasion of sales tax—Question of fact.—BHIMRAJ NAGARMAL *v.* STATE OF BIHAR [1954] 5 S.T.C. 312.

—Sec. 13(4)—Best judgment assessment relying on Inspector's report—Report not disclosed to assessee before making assessment—Questions raised by report argued by assessee at appellate and revisional stages—Whether assessment illegal.—R. B. HARDUTT MULL JUTE MILLS *v.* THE STATE OF BIHAR [1956] 7 S.T.C. 666.

—Sec. 13(5)—Assessment and imposition of penalty by single order under section 13(5) for two periods—Legality—Place of business—Firm—Service of notice in Form XV—Whether in accordance with law—Imposition of penalty—Reasonable opportunity should be given—Bihar Sales Tax Rules, 1949, Rr. 2(1), 18, 37, 64, Form XV.—JUGAL KISHORE RAMGOPAL *v.* THE STATE OF BIHAR [1955] 6 S.T.C. 272.

—Sec. 13(5)—Best judgment assessment—Nature of such assessment—Powers of officer—Sale—Terms of contract—Onus of proofs—Sale

of Goods Act, 1930, Secs. 19, 20.—GREAT INDIA RICE AND OIL MILLS *v.* STATE OF BIHAR [1957] 8 S.T.C. 341.

—Sec. 13(5), (6)—Assessment—Limitation—Change of law—Law applicable to assessment—Assessment period 1st July, 1947, to 31st March, 1948—Proceedings started on 29th June, 1950—Applicability of section 13 (6) as amended by Act VI of 1949—Whether proceedings barred by limitation.—THE STATE OF BIHAR AND ANOTHER *v.* RADHA KRISHNA KAMALA PRASAD [1957] 8 S.T.C. 440.

—Sec. 13(5)—See under Sections 4 and 9.

—Sec. 14(2), (3a)—See under Section 13(3).

—Secs. 14(4), 24(1), (2)—Service of notice—Assessee avoiding service—Service under rule 44—Whether has been validly made—Dismissal of appeal as barred by limitation—Legality—Bihar Sales Tax Rules, Rule 44.—HIRA LAL AGARWALA *v.* THE STATE OF BIHAR [1956] 7 S.T.C. 396.

—Sec. 14A, proviso—Sales outside State—Collection of sales tax—Liability to pay to Government or to refund to customers—Order of forfeiture passed by officer—Legality—Section authorising forfeiture retrospectively—Validity—Whether contravenes Article 20—Forfeiture—Whether penalty—Bihar Finance Act (IV of 1955), Sec. 4—Bihar Sales Tax Rules, Rules 19, 54—Constitution of India, Art. 20.—RAI BAHADUR HURDUT ROY MOTILAL JUTE MILLS *v.* THE STATE OF BIHAR AND ANOTHER [1956] 7 S.T.C. 609 affirmed on different grounds by Supreme Court see below.

—Sec. 14A—Sales outside State—Collection of sales tax by registered dealer on sales outside State—Whether in contravention of section 14A, Bihar Act, read with rule 19—Whether dealer liable to pay tax collected to Government—Order of forfeiture passed by officer—Legality—Scope of section 14A and rule 19—Courts should be reluctant to decide constitutional points merely as matters of academic importance—Bihar Sales Tax Rules, Rule 19.—THE STATE OF BIHAR *v.* RAI BAHADUR HURDUT ROY MOTI LALL JUTE MILLS AND OTHERS [1960] 11 S.T.C. 17 (S.C.).

—Sec. 14A—See Section 2(g), (h).

—Secs. 17, 26(1)(h)—See [1963] 14 S.T.C. 398 (Supreme Court) under OFFENCES.

—Sec. 20—Sales tax proceedings—Power to award costs—Commissioner—Revisional power—Dismissal of application for revision without hearing applicant—Legality.—BHAGWANDAS *v.* PROVINCE OF BIHAR [1949] 1 S.T.C. 234.

—Sec. 20A—Legislative powers—Provisions in section 20A, Bihar Act, relating to refund of unauthorised collection of sales tax—Validity—Whether *ultra vires* Legislature—Bihar Sales Tax Act (19 of 1959), Sec. 20A—Constitution of India, Art. 19(1)(f), Sch. VII, List II, Entry 54.—INDIAN COPPER CORPORATION LTD. AND OTHERS *v.* STATE OF BIHAR AND OTHERS [1966] 18 S.T.C. 181.

—Secs. 21, 24(4)—Board of Revenue—Revisional power—Commissioner—Determination of question under section 21—Whether an order—Whether revision lies to Board—Bihar Sales Tax Rules, 1947, R. 36(5)(a).—S. C. COONDoo & Co. *v.* THE STATE OF BIHAR [1957] 8 S.T.C. 650.

—Secs. 23, 24, 25—Appeal—Supreme Court—Special leave under Article 136—When can be granted—Nature of powers under that Article—Claim for deduction for three periods of assessment disallowed by Sales Tax Authorities and Board of Revenue and refusal by Board to state case—High Court dismissing applications for reference under section 25(2) for two periods and answering against assessee question referred under section 25(3) for third period—Application under Article 136 for special leave to appeal to Supreme Court against orders of Board—Maintainability—Power of Supreme Court to question propriety of leave when appeal is heard—Constitution of India, Article 136.—CHANDI PRASAD CHOKHANI *v.* THE STATE OF BIHAR [1961] 12 S.T.C. 506 (S.C.).

—Sec. 24(1), (2)—See also Section 14(4).

—Sec. 24(2)—Appeal—Limitation—Delay in filing appeal—Question whether assessee was prevented on account of illness from presenting appeal in time—Question of fact—Assessee not diligent but guilty of laches and negligence in pursuing his remedy of appeal—Whether delay in filing appeal can be condoned.—BALDEO LAL ROY *v.* STATE OF BIHAR [1960] 11 S.T.C. 104.

—Sec. 24(4)—Revision—Commissioner—Limitation—Change of law—Initiation of assessment proceedings prior to amendment—Revision by Commissioner—Applicability of new law—Right of revision—Whether a vested right.—VISHANJI *v.* THE STATE OF BIHAR [1961] 12 S.T.C. 226.

—Secs. 24(4), (6), 25—Revision—Board of Revenue—Power to decide *suo motu* point not taken in revision petition—Whether notice in Form XII should be sent—Whether reasonable opportunity under section 24(6) has been given—Question of fact or law—Power of High Court to decide question in reference under section 25(1)—Bihar Sales Tax Rules, Rule 38.—BHARAT SUGAR

MILLS LTD. *v.* THE STATE OF BIHAR [1957] 8 S.T.C. 832.

—Sec. 24(5)—See under Section 9.

—Sec. 25(1)—Reference—Application to Board of Revenue to state case—Limitation—Validity of reference if application is made after period of limitation.—THE STATE OF BIHAR *v.* TELU RAM JAIN [1953] 4 S.T.C. 252.

—Sec. 25(1)—Reference—Question not argued before Board of Revenue or Deputy Commissioner and not dealt with by them in their orders—Whether can be referred—Sugar-cane—Whether green vegetable and exempt from taxation—Notification No. 9884-F.T. dated 28th August, 1947.—TIKHAN AGRICULTURAL CONCERN *v.* THE STATE OF BIHAR [1961] 12 S.T.C. 341.

—Sec. 25(3)—Sales outside State—Inter-State sales—Goods delivered for consumption inside State—Liability to sales tax during period 26th January, 1950, to 31st March, 1952—Constitution of India, Article 285(2)—Reference—New question—Whether can be raised—Sales Tax Laws Validation Act (VII of 1956)—Sales Tax Continuance Order, 1950.—MESSRS BURN & Co., LTD. *v.* THE STATE OF BIHAR AND ANOTHER [1959] 10 S.T.C. 281.

—Sec. 25—See under Section 2(h), (i).

—Sec. 25—See also Section 2(g) and Bihar Sales Tax Act, 1944, Sections 10(3) and 21.

—Sec. 25 (2) (b)—See under Section 13(3).

—Sec. 26—Offences—Inspection of accounts—Obstruction to officer—Prosecution under Penal Code by Second Class Magistrate and acquittal—Subsequent prosecution under section 26(1)(a) and (h), Bihar Sales Tax Act—Legality—Constitution of India, Article 20(2)—Criminal Procedure Code, 1898, section 403—General Clauses Act, 1897, section 26.—SHYAMLAL JAGNANI *v.* THE STATE [1954] 5 S.T.C. 245.

—Sec. 26 (1) (h).—See under Section 17.

—Sec. 32—Deductions—Sales to registered dealers—Applicability of rule 36(2) made under 1944 Act—Whether rule 36(2) has ceased to exist after framing of rule 18 under 1947 Act—Reference—New point of law—Whether can be raised during hearing of reference—Rules under Bihar Sales Tax Act (VI of 1944), Rule 36(2)—DWARKADAS AND RADHAKRISHNA *v.* STATE OF BIHAR [1960] 11 S.T.C. 29.

—Sec. 33—See under Section 2(c) and 2(g).

Bihar Sales Tax (Amendment) Act (VI of 1949)
—Exemption of contracts of sale entered into

before certain date—Chotanagpore—Act VI of 1949 amending proviso to section 4(1)—Notification extending Act VI of 1949 to Chotanagpore—Validity—Applicability of Act VI of 1949 to proceedings commenced in October, 1948—Jurisdiction to assess—Whether depends on the issue or validity of notices.—THE STATE OF BIHAR *v.* S. S. MUKHERJEE [1954] 5 S.T.C. 377.

—See also Bihar Sales Tax Act, 1947, Sec. 2(g).

Bihar Sales Tax (Definition of Turnover and Validation of Assessments) Act, 1958—Turnover—Sales tax collected by dealer—Inclusion in turnover—Validity of Bihar Sales Tax (Definition of Turnover and Validation of Assessments) Act, 1958—Whether Act imposes tax on sale of goods—Constitution of India, Schedule VII, List II, Item 54.—ASOKA MARKETING COMPANY LIMITED *v.* THE STATE OF BIHAR [1959] 10 S.T.C. 110.

Bihar Sales Tax Rules, 1949, Rule 39—Review—Limitation—Scope of rule 39.—INDIAN COPPER CORPORATION LTD. *v.* STATE OF BIHAR AND OTHERS [1965] 16 S.T.C. 772 (S.C.).

BILL BOOKS

(See ACCOUNT BOOKS)

BISCUITS

Whether bread or cooked food—Whether exempted.—Bread and biscuits are different commodities and therefore item 3 of the Schedule to the Bengal Finance (Sales Tax) Act, 1941, does not apply to the sale of biscuits. Biscuits however are a kind of cooked food and they are not cakes, pastries or sweetmeats although they are prepared more or less in the same way as cakes and pastries as well as bread. The sale of biscuits is therefore exempt from sales tax under item 7 except when sold in sealed containers.—DIAMOND BISCUIT CO. *v.* STATE OF WEST BENGAL [1955] 6 S.T.C. 110.

Biscuits—Whether cooked food and exempt from sales tax.—The term "cooked food" used in entry 41 of Schedule II to the C.P. and Berar Sales Tax Act, 1947, cannot be read in a wide sense so as to include everything made fit for eating by application of heat, as by boiling, baking, roasting, broiling etc. The term is confined to those cooked things which one generally takes at regular meal hours. Therefore biscuits do not fall within the meaning of the term "cooked food" used in entry 41, and are, therefore, not exempt from tax under that entry. It would not be legitimate to put on the words of entry 41 a construction giving them a special meaning. Those words must be construed as understood in common parlance. The exemption

granted by entry 41 is a creature of the statute and must be construed strictly.—COMMISSIONER OF SALES TAX, M.P., INDORE *v.* SHRI BALLABHDAS ISHWARDAS, BOMBAY BAZAR, KHANDWA [1968] 21 S.T.C. 309 (M.P.).

BOARDING HOUSE

(See also HOTELS)

Method of calculation of cost of meal.—The applicants ran a boarding house in which they kept boarders and also served meals to casual customers. The charges for meals in the case of monthly boarders was Rs. 59-8-0 and in the case of fortnightly boarders Rs. 29-14-0. The Sales Tax Authorities found that on Sundays and other public holidays, boarders were given only one meal in the middle of the day and were not given night meals. The practice for the boarders was to buy coupons and pay for the meals by means of those coupons. The applicants did not maintain any account of the coupon books printed and sold to their customers: *Held*, that the only rational method of arriving at the average cost of meal would be to divide the total amount for a month or a fortnight by the number of meals supplied to each boarder during the month or fortnight.—FRIENDS UNION JOSHI CLUB *v.* THE STATE OF BOMBAY [1956] 7 S.T.C. 257.

Articles of food and drink sold in hotel, restaurant or boarding house—Sweetmeat stall attached to hotel—Whether liable to enhanced rate of tax—Scope of proviso to section 3(1)(b), Madras General Sales Tax Act, 1939.—The liability to pay the enhanced rate of tax under the proviso to section 3(1)(b) of the Madras General Sales Tax Act, 1939, arises only if articles of food and drink are sold in a hotel, boarding house or restaurant. The three terms, hotel, boarding house and restaurant, imply that what is supplied there as and by way of meals, refreshments and drinks are intended to be consumed at that place and facilities are provided for such consumption. They do not refer to a street sweetmeat stall where such facilities are not provided and where articles are sold for the purpose of being taken away and not for the purpose of consuming there. An establishment consisting of a restaurant and a sweetmeat stall was conducted in the same building having separate door numbers by a common proprietor and a common licence was issued to him for running them. There was a separate entrance to the sweetmeat stall and separate accounts were maintained for each of the businesses: *Held*, that the sweetmeat stall did not attract the proviso to section 3(1)(b) and could not therefore be assessed at the enhanced rate of tax.—STATE OF MADRAS *v.* H.A. KANCHILAL [1956] 7 S.T.C. 606 (Mad.).

Dealers in articles of food and drink—Classification.—Although the proviso to section 3(1)(b) of the Madras General Sales Tax Act, 1939, was enacted before the Constitution of India, 1950, came into force and the Constitution is not retrospective in its operation, the proviso has to satisfy the test of equal protection of laws guaranteed by Article 14 of the Constitution before it can be enforced. The initial presumption, however, is in favour of the validity of the proviso. Even though the Legislature of the Province of Madras could not have been conscious of the limitation subsequently imposed by Article 14 when the Legislature enacted the proviso in 1949, if the Courts can reasonably conceive of any state of facts existing at the time when the validity of the provision is challenged, to justify the classification on which the legislative discrimination could be based, it is the duty of the Court to uphold the validity of the legislative provision. There are at least three lines of classifications running through section 3(1)(b) and the proviso thereto and all the three must satisfy the test of reasonable classification. Even if one fails to satisfy the test, that would bring the provision within the scope of the ban imposed by Article 14 of the Constitution. The distinction made under the proviso to section 3(1)(b) between the two classes of dealers in articles of food and drink with an annual turnover of Rs. 25,000 and more, *i.e.*, (i) dealers in such articles of food and drink sold in hotels, boarding houses and restaurants, and (ii) dealers in such articles of food and drink sold elsewhere, has no reasonable or just relation to the object of the Act, which is to tax the turnover of the sales of a dealer. As the apparent discrimination, which results in one class of such dealers being singled out for the levy of tax at a higher rate, has not been explained by any classification with a reasonable basis, having a just and reasonable relation to the object of the Act, the proviso to section 3(1)(b) offends Article 14 of the Constitution and is void and unenforceable.—A. R. KRISHNA IYER AND ANOTHER *v.* THE STATE OF MADRAS [1956] 7 S.T.C. 346 (Mad.).

—Under the proviso to section 3(1)(b) of the Madras General Sales Tax Act, 1939, a dealer selling articles of food and drink in a hotel, boarding house or restaurant with a turnover of not less than Rs. 25,000 would be taxed at the rate of 4½ pies for every rupee of his turnover; but under section 3(1)(b) a dealer in similar articles with a less turnover in a hotel, boarding house or restaurant or in different articles with a turnover of more than Rs. 25,000 or a dealer in any article including articles of food and drink

with any turnover, whether less than Rs. 25,000 or more than that amount, selling outside a hotel, boarding house or restaurant would be charged only at the rate of three pies for every rupee on such turnover. The assessee who came under the first category contended that the proviso to section 3(1)(b) offended Article 14 of the Constitution and was, therefore, void: *Held*, that the classification mentioned in the section was founded on intelligible differentia distinguishing dealers like the assessee from other dealers, that it had a rational relation to the object sought to be achieved and that therefore it was not void as offending Article 14 of the Constitution. *Krishna Iyer v. State of Madras* [1956] (7 S.T.C. 346) dissented from.—KADIYALA CHANDRAYYA *v.* THE STATE OF ANDHRA [1957] 8 S.T.C. 33 (A.P.).

—The proviso to section 3(1)(b) of the Mysore Sales Tax Act, 1948, making a differentiation in the extent of liability between sales within and sales outside hotel, boarding house or restaurant of articles of food and drink has neither a reasonable basis nor a just relation to the object of the Act. It is therefore void and unenforceable as offending Article 14 of the Constitution. Although a restriction is imposed by section 11 on the collection of tax by dealers, this cannot be an excuse for their not being charged to tax under section 3. The payment of tax by the dealers may diminish their gains or even increase their loss but payment has to be made irrespective of this, since the recovery of the tax from others is not a right conferred by the Sales Tax Act or the Constitution, much less a condition precedent to it. *A. R. Krishna Iyer and Another v. The State of Madras* [1956] (7 S.T.C. 346; A.I.R. 1956 Mad. 480) relied on.—B. SEETHARAMAIAH *v.* THE ASSISTANT SALES TAX OFFICER, BANGALORE CITY, AND OTHERS [1957] 8 S.T.C. 611 (Mys.).

Dealers in articles of food and drink sold in hotel—Proviso to section 3(1)(b) held unconstitutional by High Court—Tribunal applying law and setting aside assessment—Refund by assessing authority of excess tax paid by assessee—Subsequent legislation validating assessment and replacing proviso with retrospective effect—Officer reversing assessment and demanding tax refunded to assessee—Validity of order.—CEYLON THOWFECK HOTEL *v.* THE STATE OF MADRAS [1961] 12 S.T.C. 238 (Mad.).

—The proviso to section 3(1)(b) of the Madras General Sales Tax Act, 1939, in its form as amended by Madras Act XV of 1956 has not succeeded in avoiding the taint of unconstitutionality which was held to attach to it, prior to

its amendment. The addition of the words "stall or any other place" to the expression "hotel, boarding house or restaurant" in the proviso did not have the effect of bringing to enhanced levy of tax, sales of articles of food and drink wherever they might be sold, and the discriminatory nature of the imposition of tax continued. Therefore the amended proviso was also unconstitutional as offending Article 14 of the Constitution. Even if the Legislature can be presumed to have intended that all places where articles of food and/or drink are sold were to be brought within the higher rate of tax, they have failed to achieve that object. The decision in *A. R. Krishna Iyer v. State of Madras* [1956] (7 S.T.C. 346) does not require reconsideration.—*K.M. GOEL, PROPRIETOR, BOMBAY ANAND BHAVAN v. THE STATE OF MADRAS* [1961] 12 S.T.C. 527 (Mad.).

—The proviso to section 3(1)(b) of the Madras General Sales Tax Act, 1939, which makes a distinction between dealers in articles of food and drink sold in hotels, boarding houses and restaurants and dealers in such articles sold elsewhere does not offend Article 14 of the Constitution. Meals hotels which serve solids and liquids as part of the meals, vegetarian or non-vegetarian, would be governed by the proviso to section 3(1)(b). An "article of drink" means any particular liquid swallowed or absorbed and the expression cannot be confined to aerated water or beverage. The fact that rasam, buttermilk or curd served in a hotel is usually mixed with a solid like rice does not make it any the less an article of drink. Both solids as well as liquids served in a meals hotel answer the description of food. *Kadiyala Chandrayya v. The State of Andhra* [1957] (8 S.T.C. 33) followed.—*THE STATE OF ANDHRA PRADESH v. SRI CHINTALA-PUDI RAMACHANDRA ROW AND OTHERS* [1962] 13 S.T.C. 697 (A.P.).

BOARD OF REVENUE

(See also APPEAL, REFERENCE and REVISION)

Abolition—Revision petition pending before Board
—*Whether can be transferred to Commissioner of Commercial Taxes.*—After the repeal of the Mysore Sales Tax Act, 1948, and after the abolition of the Board of Revenue by the Mysore Revenue Appellate Tribunal Act, 1957, all revision petitions under the Mysore Sales Tax Act, 1948, that were pending before the Board of Revenue when it was abolished had to be heard by the Commissioner of Commercial Taxes by virtue of the notification issued by the Government under the Mysore Sales Tax Act, 1957.—*N. VARADACHAR v. COMMISSIONER OF COMMERCIAL TAXES, MYSORE* [1960] 11 S.T.C. 94 (Mys.).

Board dismissing for default review petition—Application for restoration of review petition.—If the Board of Revenue by the time it stood abolished had disposed of a revision petition under the provisions of section 4(1) of the Mysore Board of Revenue Act, 1955, and had dismissed for default an application for the review of the order made by it on such review petition, but an application for restoration of the review petition was still pending before it when the Mysore Revenue Appellate Tribunal Act, 1957, came into force, the said proceedings could not be transferred to the Commissioner of Commercial Taxes and he had no jurisdiction to deal with the same. The said matter stood transferred to the Mysore Revenue Appellate Tribunal under the provisions of section 11 of the Mysore Revenue Appellate Tribunal Act, 1957. *Quære.*—Whether the Revenue Appellate Tribunal to whom the matter stood transferred had jurisdiction to deal with the same.—*ITTIGI VEERABHADRAPPA v. COMMISSIONER OF COMMERCIAL TAXES IN MYSORE, BANGALORE* [1959] 10 S.T.C. 531 (Mys.).

Board dismissing for default revision petition—Application for restoration of revision petition.—A revision petition under the Mysore Sales Tax Act, 1948, was dismissed for the default by the Board of Revenue on account of the non-appearance of the assessee or his counsel. The assessee then made an application for restoration of the revision petition and when that application was pending the Board of Revenue was abolished by the Mysore Revenue Appellate Tribunal Act, 1957. In the meantime the Mysore Sales Tax Act, 1948, was replaced by the Mysore Sales Tax Act, 1957. Section 40 of the Mysore Sales Tax Act, 1957, provided that all pending proceedings under the 1948 Act should be continued as if that Act had not been repealed and under section 40(2) the Government could specify the authority which should exercise the functions exercisable under the 1948 Act. By a notification made under section 40(2) the Government specified the Commissioner of Commercial Taxes as the authority who should exercise the functions exercisable under the 1948 Act. The Commissioner, who heard the application for restoration of the revision petition, dismissed it for the reason that the Board having dismissed it for default, he could not restore the revision petition. On the questions whether the Commissioner of Commercial Taxes or the Revenue Appellate Tribunal was competent to hear the application and whether the dismissal of that application by the Commissioner was proper: *Held*, (1) that when the Board of Revenue was asked to restore the revision petition which had been dismissed for default, it was not asked to

exercise the power of review under section 7 of the Mysore Board of Revenue Act but was asked to exercise the revisional powers conferred on it by section 4(1) of the Mysore Board of Revenue Act read with section 15 of the Mysore Sales Tax Act, 1948; (2) that the application for restoration of the revision petition should therefore be heard by the Commissioner of Commercial Taxes in accordance with the notification made by the Government under section 40(2) of the Mysore Sales Tax Act, 1957, and not by the Mysore Revenue Appellate Tribunal, but it was the duty of the Commissioner to dispose of the application on its merits without declining such jurisdiction merely on the ground that the Board of Revenue had already dismissed the revision petition.—*C.L. HAJEE ABDUL SUBHAN AND Co. v. COMMISSIONER OF COMMERCIAL TAXES* [1960] 11 S.T.C. 113 (Mys.).

Board of Revenue—Power of review—Limitation.—See *CALCUTTA TANNERIES (1944) LTD. v. STATE OF WEST BENGAL* [1952] 3 S.T.C. 105.

Doctrine of precedents—How far applicable.—See under HIGH COURT.

Limitation—Revision beyond four years from appellate order of Commercial Tax Officer, but within four years from revised order of assessment of Deputy Commercial Tax Officer—*Legality*.—*P. S. N. S. AMBALAVANA CHETTIAR v. COMMISSIONER OF COMMERCIAL TAXES, MADRAS* [1963] 14 S.T.C. 760 (Mad.).

Power to entertain question relating to validity of Act.—The Board of Revenue has no power to decide the question whether Explanation 1 to section 2(g) of the Bengal Finance (Sales Tax) Act, 1941, is *ultra vires* the Legislature. It is for the High Court to decide that question.—*UNION CREDIT CORPORATION LTD. v. STATE OF WEST BENGAL* [1955] 6 S.T.C. 246. See also WRITS UNDER CONSTITUTION AND SUITS.

Power to award costs.—The award of costs by the Board of Revenue and the officers subordinate to it in sales tax cases is not lawful. *MEREDITH, J.*, said:—"Even if it be assumed that the Board is a Court, it is still a statutory court of limited jurisdiction, with no powers beyond those conferred by the relevant statute or statutes. It has no inherent powers. Even had the Sales Tax Act contained no provision regarding costs at all, that would be the position. The fact that it does contain a single provision with regard to costs and that relating only to the High Court, reinforces the view that apart from that provision there is no power to award costs".—*THE PROVINCE OF BIHAR v. JOKHI RAM RAM PRASAD AND ANOTHER* [1948] 1 S.T.C. 202 (Pat.).

—In a proceeding under the Bihar Sales Tax Act, 1947, costs cannot be awarded against a dealer except by the High Court under clause (6) of section 25. *The Province of Bihar v. Jokhi Ram Ram Prasad and Another* [1948] (1 S.T.C. 202) followed.—*BHAGWAN DAS v. THE PROVINCE OF BIHAR* [1949] 1 S.T.C. 234 (Pat.).

Power of Board of Revenue.—The Board of Revenue is a body created by the Government to exercise some of its powers and discharge some of its functions (*Vide* Section 6 of the Board of Revenue Act) and it cannot sit in judgment over the decisions of the State Government.—*KISANLAL RADHAKISAN v. THE STATE* [1952] 3 S.T.C. 336.

Power of revision—Bar to the exercise of power.—The Board of Revenue is not prevented from exercising its power of revision under section 34 of the Madras General Sales Tax Act, 1959, solely for the reason that a belated appeal has been filed to the Appellate Tribunal. When section 34(2)(b) speaks of an order having been "made the subject of an appeal" to the Appellate Tribunal it is an effective appeal to that appellate authority that is contemplated. Where a petition to condone the delay in filing an appeal to the Appellate Tribunal is rejected and the appeal petition is also rejected *in limine*, it cannot be said that the order has been made the subject of an appeal to "the Appellate Tribunal" within the meaning of section 34(2)(b) of the Act. *A. V. Srinivasulu Naidu v. Commissioner of Income-tax, Madras* [1948] (16 I.T.R. 341) relied on. *Mela Ram and Sons v. Commissioner of Income-tax, Punjab* [1956] (29 I.T.R. 607) distinguished.—*ERODE YARN STORES v. STATE OF MADRAS* [1963] 14 S.T.C. 724 (Mad.).

Revisional jurisdiction.—See *BURMAH SHELL OIL STORAGE AND DISTRIBUTING Co. v. BOARD OF REVENUE, ANDHRA PRADESH* [1963] 14 S.T.C. 13 (A.P.) and *T. M. L. ALAGAPPA CHETTIAR v. STATE OF MADRAS* [1963] 14 S.T.C. 839 (Mad.).

Propriety of best judgment assessment by Board of Revenue—Whether justified in coming to a different conclusion in another year on same material.—There was nothing in law which could prevent the Board of Revenue from coming to a decision on some materials that were before it that an assessment to the best of judgment under section 13(3) of the Bihar Sales Tax Act, 1947, was proper, even though with respect to another assessment period, the Board had not accepted the same material as sufficient for making a best judgment assessment.—*DEO NARAYAN SINGH ISHWAR NARAYAN SINGH v. THE STATE OF BIHAR* [1960] 11 S.T.C. 436 (Pat.).

—*Best judgment assessment—Estimation of turnover—Addition of profit to total purchases—Application of flat rate in arriving at profit—Legality—Board of Revenue—Power to decide case on materials available on record instead of remanding it.*—PADAMSINGH v. COMMISSIONER OF SALES TAX, MADHYA PRADESH [1965] 16 S.T.C. 134 (M.P.).

Whether body corporate or part of Government.—The Board of Revenue, constituted by the Travancore-Cochin Board of Revenue Act, is not a body corporate but only a part of the Government of the State. Therefore it could not be said that the duty cast upon such a Board by sub-rule (3) of rule 4 of the Travancore-Cochin General Sales Tax Rules, 1950, amounts to a delegation of the rule-making power of the Government under section 24 of the Travancore-Cochin General Sales Tax Act, 1125.—GANNON DUNKERLEY AND CO., MADRAS (PRIVATE) LTD. v. SALES TAX OFFICER, MATTANCHERRY [1957] 8 S.T.C. 347 (Ker.).

Works contracts—Travancore-Cochin—Board of Revenue—Power to fix actual percentages of admissible deductions under rule—Non-fixation by Board—Allowance of maximum percentages—Legality.—GANNON DUNKERLEY AND CO. MADRAS (PRIVATE) LTD. v. SALES TAX OFFICER, MATTANCHERRY [1957] 8 S.T.C. 347 (Ker.).

BOMBAY SALES TAX ACT

Bombay Sales Tax Act, 1952—Whether ultra vires Bombay Legislature.—The whole of the Bombay Sales Tax Act (XXIV of 1952) is *ultra vires* the Bombay Legislature because the definition of "sale", which permits tax being imposed on sales prohibited under Article 286 of the Constitution of India permeates the whole Act and it is impossible to sever any specific provision of the Act so as to save the rest of the Act.—UNITED MOTORS (INDIA) LTD. AND OTHERS v. THE STATE OF BOMBAY AND ANOTHER [1953] 4 S.T.C. 10. On appeal to the Supreme Court see the next para.

—*Per PATANJALI SASTRI, C.J., MUKHERJEA, GHULAM HASAN and BHAGWATI, J.J. (BOSE, J., dissenting)*—The Bombay Sales Tax Act, 1952, did not contravene the provisions of Article 286(1)(a) by purporting to charge sales or purchases excluded by that Article from State taxation and the Rules framed under the Act excluded the other two categories of sales or purchases described under Article 286(1) (b) and (2). As the Act and the Rules made thereunder were brought into force simultaneously the State of Bombay could not be considered to have made a "law imposing or authorising the imposition of a tax" on sales or purchases excluded under

clauses (1) and (2) of Article 286. Consequently the Bombay Sales Tax Act, 1952, was not *ultra vires* the Bombay Legislature. Rule 5(2)(i), which provided that in order to claim deduction for the sales covered by clauses (1)(b) and (2) of Article 286, the goods should be consigned only through a railway, shipping or aircraft company or country boat registered for carrying cargo or public transport service or by registered post, was *ultra vires* the rule-making authority inasmuch as Article 286(2) in exempting sales in the course of inter-State trade made no distinction between modes of transport by which the goods were despatched and there was no reason why sales of goods despatched by other modes of transport should not also be deducted from the taxable turnover. But rule 5(2)(i), being clearly severable from rule 5(1)(i), could be ignored and the exemption under rule 5(1)(i) might be allowed to stand. No objection can reasonably be raised if the taxing authority insists on certain modes of proof being adduced before a claim to exclusion can be allowed. The provisions of the charging sections 5 and 10 of the Bombay Sales Tax Act, 1952, fixing Rs. 30,000 and Rs. 5,000 as the minimum taxable turnover for general tax and special tax respectively were not discriminatory and were not therefore void under Article 14 read with Article 13 of the Constitution. As the tax is imposed, in ultimate analysis, on receipts from individual sales or purchases of goods effected during the accounting period, it is possible to separate at the assessment the receipts derived from exempted sales or purchases and allow the State to enforce the statute with respect to the constitutionally taxable subjects, it being assumed that the State intends naturally to keep what it could lawfully tax, even where it purports to authorize the taxation of what is constitutionally exempt. The principle is that severability in such cases includes separability in enforcement. *Per BOSE, J.*—The Bombay Sales Tax Act, 1952, was *ultra vires* the Constitution of India. In determining the validity of the Act the Rules framed thereunder should be ignored. Rules are made by a subordinate authority which is not the Legislature and the validity of an Act of a competent Legislature cannot be made to depend upon what some subordinate authority chooses to do or not to do. *United Motors (India) Ltd. and Others v. The State of Bombay and Another* [1953] (4 S.T.C. 10) reversed.—STATE OF BOMBAY AND ANOTHER v. THE UNITED MOTORS (INDIA) LTD., AND OTHERS [1953] 4 S.T.C. 133 (S.C.).

[The decision in *The State of Bombay and Another v. The United Motors (India) Ltd., and Others* [1953] (4 S.T.C. 133) in so far as it related

to the interpretation of Article 286(2) was overruled in *The Bengal Immunity Co. Ltd. v. The State of Bihar* [1955] (6 S.T.C. 446). See also the cases cited under the CONSTITUTION OF INDIA.]

—Limitation—Revision application before Collector—Refusal to condone delay after hearing applicants—Legality.—*JAIN STORES OF BOMBAY v. THE STATE OF BOMBAY* [1956] 7 S.T.C. 415.

—Manufacturers and distributors—Goods supplied to distributors under consignment notes—Accounts of manufacturers credited only after sale of goods—Transaction between manufacturers and distributors—Whether sale—Liability to sales tax.—*MAY & BAKER LTD. v. THE STATE OF BOMBAY* [1956] 7 S.T.C. 448.

—Revision—Dismissal of appeal and revision application on proper grounds—Collector granting relief acting *suo motu*—Maintainability of revision to Tribunal.—*BABU PASU & Co. v. THE STATE OF BOMBAY* [1956] 7 S.T.C. 507.

—Tax on inter-State sales—Validity of Sales Tax Laws Validation Act, 1956—"Law", meaning of—Whether proceedings for levy can be initiated after 6th September, 1955—Constitution of India, Article 286(2)—Sales Tax Laws Validation Act (VII of 1956).—*DIALDAS PARMANAND KRIPALANI v. P. S. TALWALKAR* [1956] 7 S.T.C. 675.

Bombay Sales Tax Act, 1946, Sec. 2(c)—Dealer—Carrying on business—Scope of definition of dealer in section 2(c)—Educational society entrusting construction of college buildings to contractor—Society manufacturing bricks and importing steel for supplying to contractor—Surplus brick and steel sold to individuals at cost price—Whether society carries on business of selling goods—Liability to sales tax—Motive to make profit—Whether necessary.—*THE STATE OF BOMBAY v. THE AHMEDABAD EDUCATION SOCIETY* [1956] 7 S.T.C. 497.

—Sec. 2(c)—Offences—Delay in filing returns—Firm—Whether dealer—Registration certificate not issued in firm name or names of partners—Prosecution of partners—Legality.—*STATE v. R. M. SHAH & Co.* [1958] 9 S.T.C. 683.

—Sec. 2(c)—Commission agent—Advertising firm—Preparation of blocks by block-makers—Blocks prepared as ordered by clients—Advertising firm receiving only commission—Whether there is sale of blocks by firm to clients—Nature of transaction—Indian Contract Act, 1872, Sections 211, 213, 216, 217, 218 and 230.—*SISTA'S LIMITED v. THE STATE OF BOMBAY* [1956] 7 S.T.C. 343. For the decision of the High Court in this case, see the next para.

—Sec. 2(c)—Dealer—Commission agents—Advertising firm—Preparation of blocks by block-makers—Blocks prepared as ordered by clients—Advertising firm receiving only commission—Whether dealer—Nature of transaction.—*THE STATE OF BOMBAY v. SISTA'S LTD.* [1957] 8 S.T.C. 593.

—Sec. 2(c)—Second-hand goods—Sale of car used by managing director of company—Liability to sales tax.—*STEELAGE INDUSTRIES LTD. v. THE STATE OF BOMBAY* [1956] 7 S.T.C. 493 reversed. See next para.

—Secs. 7(c), (j), 5—Dealer—Nature of liability under Bombay Sales Tax Act—Company carrying on business of selling steel furniture—Sale or motor car used by managing director—Liability to tax.—*STEELAGE INDUSTRIES LTD. v. STATE OF BOMBAY* [1957] 8 S.T.C. 376.

—Secs. 2(c), 11A—Non-resident—Whether dealer—Presence of agent inside State—Liability of non-resident principal—"Escaped assessment" meaning of—Applicability of section 11A to assessee who are assessed for first time—Deduction—Despatch of goods outside Bombay—Production of railway receipts necessary.—*BOMBAY CYCLE STORES Co. v. THE STATE OF BOMBAY* [1956] 7 S.T.C. 260. On a reference see below.

—Secs. 2(c), 11(5), 11A—Dealer—Escaped assessment—Dealer residing at Bombay employing clearing agent and effecting sales at Bombay—Liability to Bombay sales tax—Scope of sections 11(5) and 11A.—*BOMBAY CYCLE STORES Co., LTD. v. THE STATE OF BOMBAY* [1957] 8 S.T.C. 455 affirmed by Supreme Court see below.

—Sec. 2(c)—Dealer—Carrying on business—Company in Nagpur with registered office in Bombay importing cycles, taking delivery of them at Bombay and effecting sales at Bombay—Liability to Bombay sales tax.—*BOMBAY CYCLE STORES Co. (PRIVATE) LTD. v. THE STATE OF BOMBAY* [1961] 12 S.T.C. 790 (S.C.).

—Secs. 2(c), 23—Sale of goods—Supply of coal to mills by colliery through selling and buying agents—Commission charged by agents—Nature of transaction—Whether sale—Liability to sales tax—Reference—Nature of jurisdiction of High Court—When new question can be raised—Colliery Control Order, 1945.—*THE STATE OF BOMBAY v. UNITED COAL Co.* [1958] 9 S.T.C. 19.

—Sec. 2(h), Schedule I, Entry 1(iii)—Motor vehicle—Traffic signals and number plates—Rate of tax—Number plates, whether accessories of motor vehicles—Wages and cost of installation—Whether can be deducted from taxable turnover.

—JAYAWANT RAMRAO NANA *v.* THE STATE OF BOMBAY [1952] 3 S.T.C. 117.

—Sec. 2(h), (i)—Sale price—Turnover—Sale of bricks—Conveyance charges included in bills but shown separately—Whether should be excluded in fixing turnover.—N. C. PALIA AND SONS *v.* THE STATE OF BOMBAY [1952] 3 S.T.C. 145.

—Secs. 5, 8—Application for registration—Different branches of same business—Necessity to state gross turnover of entire business—Application for registration of one branch where turnover was less than minimum—Failure to mention entire turnover—Refusal to grant certificate for that branch—Subsequent enquiry by department and assessee asked to apply for registration of that branch—Whether assessee liable to pay sales tax while he was not registered—Whether department estopped from claiming sales tax—Bombay Sales Tax Rules, 1946, Rule 6, Form II, prior to amendment in 1948.—R. S. MANIAR *v.* THE STATE OF BOMBAY [1959] 10 S.T.C. 543.

—Sec. 5(1)(b) and (c)—Making ghee out of butter—Whether a “process”—“Gross”, meaning of—Turnover as manufacturer or processor—Whether can be added to general turnover and make dealer liable at lower limit.—MOTILAL RAMCHANDRA OSWAL *v.* THE STATE OF BOMBAY [1952] 3 S.T.C. 140.

—Sec. 5—See also Sec. 2(c).

—Secs. 6, 11, 11A, 13, 20—Return submitted and tax paid in advance by mistake on sales outside State—Suit for recovery of amount—No assessment or order made under the Act questioned—Suit whether barred by section 20—Whether impliedly barred by provisions for refund in section 13—Limitation—Sales Tax Authorities—Scope of jurisdiction—Constitution of India, Art. 286(1)(a)—Indian Limitation Act, 1908, Sch. I, Art. 96.—THE STATE OF BOMBAY (NOW GUJARAT) *v.* JAGMOHANDAS AND ANOTHER [1966] 17 S.T.C. 529 (S.C.).

—Sec. 6(1), Schedule I, entry 4—Special tax—X-ray machines—Whether “other cameras” within the meaning of entry 4 of Schedule I and liable to special tax—Meaning of words—Natural meaning or popular meaning—Interpretation of fiscal statutes.—INTERNATIONAL RADIO CO., BOMBAY *v.* THE STATE OF BOMBAY [1956] 7 S.T.C. 210.

—Sec. 6(1)(a), Schedule I, entry 6—Special sales tax—“Toilet articles” and “soaps”, meanings of—Badshahi soap and Badshahi powder used as depilatory—Whether toilet articles or soaps—Whether liable to special sales tax.—

C. C. MAHAJAN AND CO. *v.* THE STATE OF BOMBAY [1958] 9 S.T.C. 133.

—Sec. 6(1)(a)(b), Entry 21, Schedule I—Erection of passenger lifts—Whether contract for work, labour and materials—Whether sale of goods—Liability to sales tax—“Domestic electrical appliances”—Whether include passenger lifts—Liability to special tax.—EASTERN ENGINEERS *v.* THE STATE OF BOMBAY [1956] 7 S.T.C. 229.

—Secs. 6(3)(ii), 8, 18A—Manufacturing company—Discontinuance of business—Cancellation of certificate of registration—“Stock of goods remaining unsold” in section 18A, meaning of—Assessment to sales tax on plant, machinery, stock of goods and laboratory equipments—Legality—Validity of section 18A.—THE DECCAN CEMENT PRODUCTS CO., LTD. *v.* THE STATE OF BOMBAY AND ANOTHER [1957] 8 S.T.C. 100.

—Sec. 6(3), Rule 1(ii), proviso (b)—Purchase of goods free of sales tax by giving undertaking that goods are to be sold inside State—Subsequent despatch of goods outside State—Levy of tax on purchase price—Legality—Validity of proviso (b) to Section 6(3), Rule 1(ii).—M. N. GOBHAI & CO. *v.* THE STATE OF BOMBAY [1957] 8 S.T.C. 575.

—Sec. 7, Schedule II, entry 4—Exemption—Dressed poultry—Whether meat and exempt from payment of sales tax—Bombay Sales Tax Act, 1953, Schedule A, entry 33.—THE COLLECTOR OF SALES TAX, BOMBAY STATE *v.* GAURIMAL MAHAJAN AND SONS [1959] 10 S.T.C. 452.

—Sec. 8—See Secs. 5 and 6(3).

—Secs. 11, 12(3A), (4)—Penalty under section 12(3A)—When leviable—Liability to pay tax—Meaning of.—MOHANLAL BRIJLAL *v.* THE STATE OF BOMBAY [1956] 7 S.T.C. 295.

—Secs. 11, 11A, 13—See also Sec. 6.

—Sec. 11(5)—See Sec. 2(c).

—Sec. 11A—Reassessment—Change of law—Sales Tax Acts of 1946 and 1953—Period of assessment under old Act—Issue of notice—Whether under old or new Act—Proper procedure—Notice issued under old Act—Validity of assessment—Bombay Sales Tax Act, 1953, Sections 15, 48(1), (2).—S. D. KULKARNI AND OTHERS *v.* TRIBHOVANDAS BHIMJI ZAVERI [1956] 7 S.T.C. 385.

—Sec. 11A—See also Sec. 2(c).

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—Sec. 26—See also Sec. 21.

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—Sec. 8(a)—Registered dealer—Deductions—"Process" and "alter", meanings of—Mixing of different kinds of tea after purchase and sale of such mixture—Whether tea has been processed or altered—Value of tea purchased—Whether can be deducted from turnover.—*NILGIRI CEYLON TEA SUPPLYING CO. v. THE STATE OF BOMBAY* [1959] 10 S.T.C. 500.

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—Sec. 16—Penalty—Failure to pay tax due according to return before furnishing return—When penalty can be imposed.—VISWA & Co. v. STATE OF GUJARAT [1966] 17 S.T.C. 581.

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—Sec. 18(1)—See Sec. 5.

—Sec. 18B—Sales tax—Set-off—Meaning of—Scope of section 18B—Right to set-off—Whether an absolute and unconditional right—Necessity to pay sales tax under section 8 to claim the right—Bombay Sales Tax (Exemptions, Set-off and Composition) Rules, 1954, Rule 11(1A).—

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—Sec. 26(1)—Transfer of business—Liability of transferee—Meaning of clause "any tax payable.....and remaining unpaid at the time of the

transfer"—Whether liability confined to assessed tax.—COLLECTOR OF SALES TAX, BOMBAY STATE *v.* PARIMAL BROTHERS [1962] 13 S.T.C. 647.

—Sec. 26(3)—Sale of goods—Firm—Dissolution—Allotment of goods to partner—Whether sale—Provision in Act treating such transaction as sale—Validity—Whether *ultra vires* Legislature—Entries in Legislative Lists—Interpretation—"Deemed", meaning of—Constitution of India, Sch. VII, List II, Entry 54.—STATE OF GUJARAT *v.* RAMANLAL SANKALCHAND AND Co. [1965] 16 S.T.C. 329.

—Sec. 26—Transfer of business—Dissolution of firm and business carried on by firm at two places transferred to two other firms simultaneously—Applicability of section 26(2)—Validity of section 26(3)(i)—Whether *ultra vires* State Legislature.—THE STATE OF GUJARAT *v.* TAMAKUWALA & SONS [1966] 17 S.T.C. 390.

—Sec. 26—See also Sec. 2(6) and Bombay Sales Tax Act, 1946, Sec. 18.

—Sec. 28—Offences—Accounts—Sales tax proceedings—Rebate obtained from officer by using forged declaration—Prosecution under Penal Code—Sanction of officer, whether necessary—Sales Tax Officer—Whether Revenue Court—Criminal Procedure Code, 1898, Section 195(1)(c)—Indian Penal Code (XLV of 1860), Sections 34, 420, 467, 471.—STATE *v.* NEMCHAND PASHVIR PATEL AND OTHERS [1956] 7 S.T.C. 404.

—Secs. 31, 48(2), 49(1)—Scope of power of revision—Power to hold enquiry or direct enquiry to be made—Whether additional material can be admitted—Limitations on power—Assessments under 1946 Act and appellate order granting certain exemption—Revision of appellate order after repeal of 1946 Act—No period of limitation under 1946 Act—Whether limitation under 1959 Act will apply—Bombay Sales Tax Act (5 of 1946), Sec. 22—Bombay Sales Tax Act (51 of 1959), Secs. 57, 77—Bombay General Clauses Act, 1904, Sec. 7(e).—THE SWASTIK OIL MILLS LTD. *v.* H. B. MUNSHI, DEPUTY COMMISSIONER OF SALES TAX, BOMBAY [1968] 21 S.T.C. 383 (S.C.).

—Sec. 31—See also Secs. 2(6) and 15 *supra* and Secs. 35, 77, Bombay Sales Tax Act (51 of 1959).

—Sec. 34—Purchase tax—Remission of tax—Goods purchased and sold must be same as a commercial commodity—Purchase of raw tobacco and sale of *bidi pattis* made out of that tobacco—Whether sale of same commodity—Right to remission—Reference—All aspects of question referred—Whether can be considered—Bombay Sales Tax (Exemptions, Set-off and Composition) Rules, 1954, Rule 12(1A).—C. GOKALDAS & Co.

AND OTHERS *v.* THE STATE OF GUJARAT [1966] 17 S.T.C. 138.

—Sec. 34—See also Secs. 10(a), 11 and Bombay Sales Tax Act, 1946, Sec. 23.

—Sec. 36(g)—Offences—Sales Tax Officer—Whether court—Prosecution for producing fabricated documents before officer—No complaint from Sales Tax Officer—Conviction under Penal Code and Section 36(g), Sales Tax Act—Legality—Criminal Procedure Code, 1898, Section 195—Indian Penal Code (XLV of 1860), Sections 465 and 471.—STATE *v.* KANTILAL MAGANLAL [1956] 7 S.T.C. 413.

—Secs. 36, 38—Offences—Submission of false return—Statement admitting offence made to officer investigating offence—Whether admissible in evidence.—STATE *v.* KAIKHUSHROO MERWAN IRANI AND OTHERS [1958] 9 S.T.C. 681.

—Sec. 36(h)—See under Sec. 23.

—Sec. 38—Arrears of sales tax—Recovery—Surety for payment of tax liability—Amount payable under surety bond—Whether can be recovered by coercive machinery provided under Bombay Land Revenue Code, 1879.—JAYANTILAL TRAMBAKLAL PATEL *v.* B. M. GANDHI, SALES TAX OFFICER [1965] 16 S.T.C. 1039.

—Sec. 44—See Secs. 2(6), 23.

—Sec. 48—See Secs. 15, 24(1), 31.

—Sec. 49(1)—See Sec. 31.

—Sec. 51—See POKHARDAS MEGHRAJ *v.* STATE OF BOMBAY [1957] 8 S.T.C. 758.

—Sch. A, Entry 22—Boarding house—Monthly tickets—Average cost of meal—Whether more than one rupee—Method of calculation.—FRIENDS UNION JOSHI CLUB *v.* THE STATE OF BOMBAY [1956] 7 S.T.C. 257.

—Sch. B, Entries 1, 80—Absorbent cotton wool—Whether “raw cotton (ginned or unginned)” within item 1 of Schedule B, Bombay Act—Whether liable to tax under residuary entry.—COMMISSIONER OF SALES TAX, MAHARASHTRA STATE, BOMBAY *v.* FAIRDEAL CORPORATION LTD. [1962] 13 S.T.C. 750.

—Sch. B, Entries 1, 80—Sale of cotton waste—Whether covered by entry 1 or entry 80 of Schedule B—Purchase of raw materials and consumable stores—Liability to purchase tax.—ARVIND MILLS LTD. *v.* STATE OF GUJARAT [1966] 18 S.T.C. 311.

—Sch. B, Entry 9—Tractor—Whether agricultural machinery.—PASHABHAI PATEL & Co. (P.) LTD. *v.* COLLECTOR OF SALES TAX, MAHARASHTRA STATE [1964] 15 S.T.C. 32.

—Sch. B, Entry 11—Book binding cloth prepared out of medium cloth—Whether medium cloth within the meaning of entry 11 of Schedule B.—TRAMBAKLAL RATILAL *v.* THE STATE OF BOMBAY [1956] 7 S.T.C. 258.

—Sch. B, Entry 17—See Sec. 10.

—Sch. B, Entries 39, 66—“Cosmetics”, “toilet articles”, meanings of—Powders used for dusting body after bath and also used as face powder—Whether cosmetics or toilet article.—ROOPKALA INDUSTRIES *v.* THE STATE OF BOMBAY [1956] 7 S.T.C. 557.

—Sch. B, Entry 39—“Toilet article”, meaning of—Tooth powder—Whether toilet article.—THE COMMISSIONER OF SALES TAX *v.* VICCO LABORATORIES [1968] 22 S.T.C. 169.

—Sch. B, Entry 39—“Perfumed oil”—Meaning of—Ramtirth Brahmi Oil—Whether perfumed oil.—RAMTIRTH YOGASHRAM *v.* THE STATE OF MAHARASHTRA [1968] 22 S.T.C. 76.

—Sch. B, Entry 47(1)—Interpretation—*Palavs* attached to *saris*—Whether borders, laces or trimmings.—CHUNILAL HARAKCHAND *v.* THE STATE OF GUJARAT [1966] 17 S.T.C. 123.

—Sch. B, Entries 52, 80—Electric fans—Whether domestic electrical appliances.—VISWA & Co. *v.* STATE OF GUJARAT [1966] 17 S.T.C. 581.

—Sch. B, Entry 69—“Refrigerator”, meaning of—Cooling plant used for mercerising processes by textile mill—Whether refrigerator.—THE STAR TRADING Co. (PRIVATE) LTD. *v.* THE STATE OF BOMBAY [1962] 13 S.T.C. 102.

—Sch. B, Entry 80—See Sec. 10.

Bombay Sales Tax Act (51 of 1959)—Purchase tax—Refund—Goods used for the purpose of producing other goods for sale—Purchase of unginned cotton—User of ginned cotton in textile manufacture and sale of cotton seeds—Refund of purchase tax—Whether available—Bombay Sales Tax (Exemptions, Set-off and Composition) Rules, 1954, Rules 6(ii), 12.—THE STATE OF GUJARAT *v.* ANANTA MILLS LTD. [1966] 17 S.T.C. 334 (S.C.).

—Sale of goods—Works contract—Electrical contractors—Installation of electrical fittings in houses of customers—Nature of contract—Supply of materials—Whether constitutes sale—Liability to sales tax.—COMMISSIONER OF SALES TAX, MAHARASHTRA STATE, BOMBAY *v.* ARUN ELECTRICS [1965] 16 S.T.C. 385. On appeal to Supreme Court see next para.

—Sale of goods—Electrical contractors—Installation of electrical fittings in houses of customers—Nature of contract—Determination on application—Duty of Deputy Commissioner

to record evidence of contract—Invoice—Insufficient as evidence of terms of contract.—*ARUN ELECTRICS, BOMBAY v. COMMISSIONER OF SALES TAX, MAHARASHTRA STATE* [1966] 17 S.T.C. 576 (S.C.).

—Sale of goods—Works of art—Production and supply of coloured photographs of individual customers on miniature enamelled copper plates—Liability to sales tax.—*CHELARAM HASOMAL v. THE STATE OF GUJARAT* [1965] 16 S.T.C. 1021.

—Sec. 2 (11), (19)—Dealer—Carrying on business—Society, club or other unincorporated body—Whether falls within the opening or last portion of definition of “dealer”—Whether its activity should be carried on as business—Mahabaleshwar Club—Whether dealer—Whether liable to sales tax on the supply of refreshments to its members.—*THE MAHABALESHWAR CLUB v. THE STATE OF MAHARASHTRA* [1968] 22 S.T.C. 123.

—Secs. 2(11), (19), (28)—Dealer—Carrying on business—Co-operative society—Scope of definition of “dealer”—Society registered under Co-operative Societies Act, 1925—Whether should carry on business to become a dealer—Society formed for transporting fish belonging to members—Purchase of ice for preserving fish—Amounts received from members for supply of ice—Liability to sales tax.—*VERSOVA KOLI SAHAKARI VAHATUK SANGH LTD. v. THE STATE OF MAHARASHTRA* [1968] 22 S.T.C. 116.

—Sec. 2(13)—Goods—Standing timber—Whether goods.—*CHAMPALAL v. DEPUTY COMMISSIONER OF SALES TAX, EASTERN DIVISION, NAGPUR, AND 3 OTHERS* [1966] 18 S.T.C. 424.

—Sec. 2(26)(iii), Sch. B, Part I, Entry 3—Declared goods—Re-rolling mill—Mild steel round/flat bars subjected to bending at either end or drilling of holes for use in concreting work—Whether they cease to be steel bars—Whether their sale amounts to resale within section 2(26)(iii), Bombay Act.—*COMMISSIONER OF SALES TAX v. AMAR WIRE & ROLLING MILLS* [1968] 22 S.T.C. 294.

—Sec. 2(28)—Sale—Hire-purchase agreement—Transaction commencing with a proposal for financing and ending in the usual hire-purchase agreement—Liability to sales tax—Whether transactions casual sales.—*BHOGILAL LAXMI-CHAND v. THE STATE OF GUJARAT* [1966] 18 S.T.C. 141.

—Secs. 35, 77—Revision—Reassessment—Limitation—Bombay Sales Tax Acts, 1946, 1953 and 1959—Assessment year ending 31st March, 1953—Issue of notice for reassessment in June,

1966.—Scope of section 31 of 1953 Act and section 35 of 1959 Act—Whether notice barred by time—Bombay Sales Tax Act (III of 1953), Section 31.—*MRS. CHATURBAI NARAINDAS v. H. B. MUNSHI, DEPUTY COMMISSIONER OF SALES TAX* [1962] 13 S.T.C. 350.

—Sec. 39—Arrears of sales tax—Recovery—Assets of firm transferred to trustees for paying creditors rateably—Sale of stock-in-trade—Sale proceeds deposited in bank—Issue of notice to bank under section 39, demanding payment of arrears of tax due by firm—Legality.—*SAMPAT-RAJ CHHOGALALJI AND OTHERS v. V. S. PATEL, SALES TAX OFFICER, AND OTHERS* [1966] 17 S.T.C. 29.

—Secs. 57, 77—See Bombay Sales Tax Act, 1953, Sec. 31.

—Sec. 71—Sales Tax Authorities—Appearance on behalf of assessee—Advocate and sales tax practitioners—Authority to attend—Whether includes authority to appear and plead—Advocate's right to practise includes right to appear, plead and act—Form prescribed under Bombay Act—Whether any other term of engagement can be included in that form—Authorisation, mukhtyarnama or vakalatnama—Proper stamp to be affixed—Bombay Sales Tax Rules, 1959.—*L. M. MAHURKAR AND ANOTHER v. SALES TAX OFFICER, CIRCLE II, NAGPUR, AND OTHERS* [1967] 20 S.T.C. 199.

—Sch. A, Entry 7—Exemption—“Sugar”—Patasa, harda and alchidana—Whether “sugar” and exempt from sales tax.—*THE STATE OF GUJARAT v. SAKARWALA BROTHERS* [1967] 19 S.T.C. 24 (S.C.).

—Sch. A, Entry 14—Exemption—Cooked food and non-alcoholic drinks—Scope of entry 14, Schedule A—“Outside” the hotel premises—Meaning of—Cooked food served at customers' premises—Whether exempt.—*GOVINDSHRAM HOTEL v. THE STATE OF GUJARAT* [1966] 17 S.T.C. 100.

—Sch. A, Entry 15; Sch. D, Entry 4; Sch. E, Entries 3(i), 22—Cotton fabrics—Cut pieces from takas of malmal and voil cloth sold as sarees and ladies' underwear after doing embroidery work on those pieces—Whether cotton fabrics, embroidered sarees or ready-made garments—Rate of tax.—*PRAVIN BROS. v. STATE OF GUJARAT* [1964] 15 S.T.C. 478.

—Sch. A, Entry 29—Exemption—Handloom cloth—Borders woven on handloom out of pure silk, art silk and jari thread—Whether handloom cloth—Interpretation of entries in Schedule.—*STATE OF GUJARAT v. UMEDRAM LALLUBHAI* [1965] 16 S.T.C. 1059.

—Sch. B, Part I, Entry 3—See Sec. 2(26)(iii).

—Sch. C, Entries 15, 20—Machinery—Meaning of—Humidifiers used by textile mills—Whether machinery used in the manufacture of cloth.—INDUSTRIAL MACHINERY MANUFACTURERS PRIVATE LTD. *v.* THE STATE OF GUJARAT [1965] 16 S.T.C. 380.

—Sch. C, Entry 39; Sch. E, Entry 22—Pigment powders and pigment emulsions—Whether paints—Rate of tax—Scope of entry 39, Schedule C.—COMMISSIONER OF SALES TAX *v.* COLOUR CHEM. LIMITED [1968] 22 S.T.C. 90.

—Sch. C, Entry 58—Motor vehicles—Meaning of—Crawler-mounted gasoline-operated crane—Whether a motor vehicle.—COMMISSIONER OF SALES TAX *v.* VOLTAS LIMITED [1968] 22 S.T.C. 185.

—Sch. C, Entry 65; Sch. E, Entry 22—Radio cabinets and loudspeaker cabinets—Whether fall within entry 65, Schedule C, or entry 22, Schedule E—“Spare parts” in entry 65—Meaning of.—COMMISSIONER OF SALES TAX *v.* AMAR RADIO CABINET WORKS [1968] 22 S.T.C. 63.

—Sch. E, Entry 10—Wrist watch-cases—Whether spare parts of watches.—VITHAL CHHAGAN & SONS *v.* THE STATE OF GUJARAT [1966] 17 S.T.C. 96.

—Sch. E, Entry 12—“Suit-case”—Meaning of—Steel trunks—Whether suit-cases.—S. TAJBHAI & SONS *v.* THE STATE OF GUJARAT [1966] 17 S.T.C. 133.

—Sch. E, Entry 20—“Articles”, meaning of—Stainless steel utensils—Whether stainless steel articles.—STATE OF GUJARAT *v.* KESHAVLAL AND SONS [1966] 17 S.T.C. 170.

Bombay Sales Tax Act, 1953 (Prior to amendment in 1954), Sch. II, Entry 34—Rate of special tax—Plastics—Bangles made of cinematograph films—Whether made of plastics.—CELLULOID BANGLE WORKS *v.* THE STATE OF BOMBAY [1962] 13 S.T.C. 611.

Bombay Sales Tax Laws (Special Exemptions) Act, 1957, Schedule I, Entry 1—Hessian—Whether cloth—Whether exempted under entry 1, Schedule I.—COMMISSIONER OF SALES TAX *v.* SUMATILAL POPATLAL [1964] 15 S.T.C. 498.

Bombay Sales Tax Rules, 1952, Rule 5(1)(vii) proviso and Rule 5(xi)(II)—Whether *ultra vires* rule-making authority—Section 51 of 1953 Act, whether has validated the rules.—The proviso to rule 5(1)(vii) as well as rule 5(xi)(II) of the Bombay Sales Tax Rules, 1952, which purport to include the purchase price in the taxable

turnover of the purchasing dealer under certain circumstances are inconsistent with the provisions of the Act and are therefore *ultra vires* the rule-making authority. Section 51 of the Bombay Sales Tax Act, 1953, inserted in the Act by section 15 of Bombay Act XXXIX of 1956 with the object of validating the rules has failed in its object and no tax can therefore be levied under those rules. Section 51 is a section which attracts the canons of construction of fiscal statutes which impose tax. In the case of interpretation of fiscal statutes the principle laid down by LORD HOBHOUSE in *Salmon v. Duncombe* ([1886] 11 App. Cas. 627) is not strictly applicable. The word “sale” in rule 5(1)(vii) means a sale in Bombay. If there is no sale in Bombay there is a breach of the condition on which the goods attracted the deduction under rule 5(1)(vii). *Salmon v. Duncombe* ([1886] 11 App. Cas. 627) distinguished.—POKHARDAS MEGHRAJ *v.* THE STATE OF BOMBAY [1957] 8 S.T.C. 758.

—Rule 51—Notice—Firm—Service by ordinary post—Denial of receipt—Reminder received by partner but taken back by Sales Tax Officer—Whether service of notice proper—Validity of assessment—Indian Evidence Act, Sec. 114.—ADDY PHARMACY *v.* THE STATE OF BOMBAY [1956] 7 S.T.C. 340.

Bombay Sales Tax (Exemptions, Set-off and Composition) Rules, 1954, Rule 11(1)(II)—Sales tax—Grant of drawback, set-off or refund—Whether rule 11(1)(II), Bombay Sales Tax (Exemptions, Set-off and Composition) Rules, 1954, *ultra vires* rule-making authority.—MOHAMMED MASSI SAFI & CO. *v.* THE STATE OF BOMBAY [1962] 13 S.T.C. 552.

Bombay Sales Tax (Procedure) Rules, 1954, Rules 10, 21.—See Sec. 2(10) of 1953 Act.

BOOKS

Books—Meaning of—Diaries—Whether books and exempt from sales tax.—The word “books” in section 4 of the U.P. Sales Tax Act, 1948, is used not in the wider sense but in the restricted or popular sense. Therefore the diaries (containing mostly of blank papers, a sloka from Bhagwat Gita at the top of each page and a few pages of general information in the beginning) sold by the assessee are not “books”.—INDUSTRIAL AND COMMERCIAL SERVICE, ALLAHABAD *v.* COMMISSIONER OF SALES TAX, U.P., LUCKNOW [1963] 14 S.T.C. 299 (All.).

BRAIDED CORDS

“Braided cords”—Whether textiles and entitled to exemption under entry 4, Schedule III, Madras General Sales Tax Act.—“Textiles” as used in

entry 4 of Schedule III of the Madras General Sales Tax Act, 1959, should be interpreted broadly in the sense of products obtained by weaving and so interpreted "braided cords" would also be entitled to the exemption provided under that entry.—*THE STATE OF MADRAS v. T. T. GOPALIER AND ANOTHER* [1968] 21 S.T.C. 451 (Mad.). See also [1968] 22 S.T.C. 470 (Mad.).

BRAN

Bhusli or rice-bran is included in the word "cereal" in item 1 of Schedule III of the Assam Sales Tax Act (XVII of 1947) and is therefore exempt from assessment.—*MOHANLAL JOGANI RICE AND ATTA MILLS v. THE STATE OF ASSAM* [1953] 4 S.T.C. 129 (Assam).

BRANCH SHOP

Despatches of goods from one branch to another branch—*Whether taxable*—*Submission of return and payment of tax*—*Subsequent claim in appeal that despatches not taxable*—*Legality*.—See *A. K. JOSHI AND COMPANY, In re* [1955] 6 S.T.C. 70.

Goods transferred to branch outside State and sold there—*Liability to tax*.—The value of goods which the assessee transferred to its branches outside State and were sold by the assessee outside State could not be made liable to sales tax under the Madras General Sales Tax Act, 1939.—*THE STATE OF MADRAS v. MARSHALL SONS & CO., (INDIA) LTD.* [1954] 5 S.T.C. 305 (Mad.).

Hindu undivided family—*Family carrying on business at one place starting business at another place under different name*—*Branch not registered under Act*—*Best judgment assessment under section 10(5) and imposition of penalty under section 10(5)*—*Legality*.—*MIRZAMUL PRABHU DAYAL v. THE STATE OF BIHAR* [1957] 8 S.T.C. 508 (Pat.).

Registration certificate issued to head office—*Whether valid for offices outside State*.—*Per DAS and SARJOO PRASAD, JJ.*—The expression "registered as dealer" in the taxing statute has an artificial, statutory meaning, a meaning which must be consistent with the scheme and purpose of the taxing statute. For the purposes of the taxing statute, the registration certificate issued to a company with its place of business at Muzaffarpur in Bihar should not be taken as a registration certificate to the company with all its places of business inside and outside Bihar.—*TOBACCO MANUFACTURERS (INDIA) LTD. v. THE STATE OF BIHAR* [1950] 1 S.T.C. 282 (Pat.).

Sending goods to shop in another State.—Where a dealer merely sends his goods to his shop in another province, there being no contract

of sale in furtherance of which the goods are despatched, the transportation is merely for business purposes, unconnected with any sale such as is contemplated in entry 48 in List II of Schedule VII of the Government of India Act, 1935. The State Government cannot impose a transportation or export duty and, therefore, there can be no question of a sales tax in such circumstances.—*SHRIRAM GULABDAS v. BOARD OF REVENUE, MADHYA PRADESH, AND ANOTHER* [1952] 3 S.T.C. 343 (Nag.).

BREAD

Whether includes all forms of bread—*Meaning of "bread"*.—See EXEMPTION.

Biscuits, whether bread or cooked food—*Whether exempted*.—Bread and biscuits are different commodities and therefore item 3 of the Schedule to the Bengal Finance (Sales Tax) Act, 1941, does not apply to the sale of biscuits. Biscuits however are a kind of cooked food and they are not cakes, pastries or sweetmeats although they are prepared more or less in the same way as cakes and pastries as well as bread. The sale of biscuits is therefore exempt from sales tax under item 7 except when sold in sealed containers.—*DIAMOND BISCUIT CO. v. THE STATE OF WEST BENGAL* [1955] 6 S.T.C. 110.

BROKER

(See also AUCTIONEER and COMMISSION AGENT).

Brokers are those that contrive, make and conclude bargains and contracts between merchants and tradesmen in matters of money and merchandise, for which they have a fee or reward (Jacob, cited by Best, C. J., *Gibbons v. Rule*, 4 Bing. 306). This definition is derived from the Act against brokers 1604 (1 Jac. C. 21) cited Friperer, see also the Bank of England Act, 1697 (8 and 9 Will. 3. C. 20), Section 60, where the definition is those who "make or drive" bargain. A broker is not put into possession of the property to be sold as a factor is: *Baring v. Corrie* (2 B. and Ald. 143). See *Lake v. Simmons* ([1927] A.C. 487) and *Stevens v. Biller* ([1883] 2 Ch. D. 31) and also *Melford v. Hughes* ([1848] 16 M. and W. 174). "There is no doubt a broker cannot sue; he has no authority to sell in his own name, or to receive the money, and has nothing to do with goods. This is so laid down in Storey on Agency, sections 28-34, 109: To use the brief but expressive language of an eminent Judge, a broker is one who makes a bargain for another, and receives a commission for so doing. Properly speaking, a broker is a mere negotiator between the other parties, and he never acts in his own name, but in the names of those who employ him. When he is employed

to buy or sell goods, he is not entrusted with the custody or possession of them and he is not authorised to buy or to sell them in his own name (section 28). So, a broker has ordinarily no authority *virtute officii*, to receive payment for property sold by him (section 109)." *Fairlie v. Fenton* ([1870] L.R. 5 Exch. 169) per Cleasby, B., at page 172. Quoted in *THE PUBLIC PROSECUTOR v. M. THOMMAIA FERNANDO AND OTHERS* [1953] 4 S.T.C. 331, at page 335 (Mad.).

Broker, whether dealer—*Del credere agent*—Meaning of.—A factor, when he sells goods on credit (for an additional commission called a *del credere* commission) and guarantees the solvency of the purchaser, is known as a *del credere* agent. A factor is a mercantile agent who in the ordinary course of business sells or disposes of goods of which he is entrusted with the possession or control by his principal. When he is in possession of the goods, with the consent of the owner, any sale, pledge or other disposition of the goods made by him when acting in the ordinary course of business of a mercantile agent is valid as if he were expressly authorised by the owner to make the same. A broker is an agent whose ordinary course of business is to negotiate and make contracts for his principal for sale and purchase of goods and other property of which he is not entrusted with the possession or control. He has not the authority to deal with the goods which a factor enjoys. Nor has he authority to sue on his own name on contracts made by him. He is not a dealer within the meaning of section 2(c) of the C.P. and Berar Sales Tax Act, 1947. The petitioner procured customers for a colliery company and guaranteed payment of the price of coal sold to these customers. The consignments were addressed by the company directly to the customers and the railway receipts were also sent directly to them. There was never any sale by the company in favour of the petitioner, nor had the petitioner ever sold goods as its own to the customers. The property in the goods never vested in it: *Held*, that the petitioner was not carrying on the business of selling on behalf of the company, that it was no more than a guarantee broker and was not a dealer and it was therefore not liable for registration under the C.P. and Berar Sales Tax Act, 1947.—*C. P. COAL TRADING AND DISTRIBUTING CO. v. COMMISSIONER OF SALES TAX, M. P., AND ANOTHER* [1954] 5 S.T.C. 208 (Nag.).

Broker and commission agent—Distinction—Definition of dealer—Whether includes broker—Sale of sarees effected by assessee between weavers and Beparis—Whether assessee dealer and liable to sales tax.—Under entry No. 48 in List II of the

Seventh Schedule to the Government of India Act, 1935, tax is to be levied on "sale of goods" and the authority of the Provincial Legislature extended to the imposition of the tax on any transaction of sale of goods. The tax is laid on dealers under the Act and for this purpose the person sought to be taxed must carry on the business of selling goods, whether as principal or as an agent. Unless the assessee can be said to have carried on the business of selling the goods, whether as a principal or as an agent, the tax cannot be levied. The entry does not entitle the Provincial Legislature to tax brokers who may have assisted at a sale but has not sold the goods either as principal or as agent. The definition of dealer in section 2(c) of the C.P. and Berar Sales Tax Act, 1947, does not include a broker. The distinction between a broker and a commission agent is that a commission agent, having control over the goods, sells them to others. Though he may act for a disclosed principal at either end, he negotiates the sale with the purchaser on his own behalf. The broker does not sell the goods on his own behalf, but merely brings the vendor and the vendee together and settles the price. The assessee had his shop where he stocked *sarees* for sale to purchasers. He, however, afforded the weavers an opportunity of exhibiting their *sarees* at his counter, so that prospective buyers might see the goods before they bought them. When the *Beparis* (a term used in the trade to denote purchasers of such cloth) came to inspect the *sarees* and to negotiate the price, the negotiation was between the *Beparis* and the weaver, with the assessee assisting in the negotiations. The weaver was present throughout. When the price was settled a chit was placed in the *saree* and the transaction was closed. Thereafter the weaver went away and even if the *Beparis* were to change his mind, the weaver was not affected and the goods could not be returned to the weaver. If the weaver did not agree to sell the goods at the price offered by the buyer, the weaver took away his goods to another shop where he could show them to other *Beparis*. The payment was received by the seller from the assessee towards the end of the day. The amount was recovered by the assessee from the *Beparis* on bills made in the name of his shop: *Held*, that the assessee was not liable to sales tax inasmuch as he acted as a broker throughout the transaction, and not as a dealer selling goods either for himself or as agent of the weavers.—*COMMISSIONER OF SALES TAX, MADHYA PRADESH, NAGPUR v. PANDURANG TUKARAM DALAL* [1956] 7 S.T.C. 76 (Nag.).

Distributor of oil company—Invoices for goods supplied prepared in distributor's name—Distributor

liable for price of goods sold—Whether distributor dealer or guarantee-broker—Question of fact or law—Liability to sales tax.—THE STATE OF MADHYA PRADESH *v.* SRI DAYARAM RATHOD [1961] 12 S.T.C. 572 (M.P.).

BUILDING CONTRACTS

Imposition of sales tax on supply of materials in building contracts—Legality—Validity of provisions.—The expression “sale of goods” in Entry 48 in List II of Schedule VII of the Government of India Act, 1935, cannot be construed in its popular sense but must be interpreted in its legal sense and should be given the same meaning which it has in the Sale of Goods Act, 1930. It is a *nomen juris*, its essential ingredients being an agreement to sell movables for a price and property passing therein pursuant to that agreement. In a building contract which is one, entire and indivisible—and that is its norm—there is no sale of goods, and it is not within the competence of the Provincial Legislature under Entry 48 to impose a tax on the supply of the materials used in such a contract treating it as a sale. But the parties to the contract might enter into distinct and separate contracts, one for the transfer of materials for money consideration and the other for payment of remuneration for services and for work done. In such a case, there are really two agreements, though there is a single instrument embodying them, and the power of the State to separate the agreement to sell from the agreement to do work and render service and to impose a tax thereon cannot be questioned. In order to constitute a sale it is necessary that there should be an agreement between the parties for the purpose of transferring title to goods, which presupposes capacity to contract, that it must be supported by money consideration, and that as a result of the transaction property must actually pass in the goods. Unless all these elements are present, there can be no sale. Thus, if merely title to the goods passes but not as a result of any contract between the parties, express or implied, there is no sale. So also if the consideration for the transfer is not money but other valuable consideration, it may then be exchange or barter but not a sale. And if under the contract of sale, title to the goods has not passed, then there is an agreement to sell and not a completed sale. Moreover under the law there cannot be an agreement relating to one kind of property and a sale as regards another. There must be an agreement between the parties for the sale of the very goods in which eventually property passes. The Madras General Sales Tax Act is a law relating not to sale of goods but to tax on sale of goods, and it is not one of the

matters enumerated in the Concurrent List of Schedule VII of the Government of India Act, 1935, or over which the Dominion Legislature is competent to enact a law, but is a matter within the exclusive competence of the Province under Entry 48 in List II. The only question that can arise with reference to such a law is whether it is within the purview of that entry and as it is so, no question of repugnancy under section 107 can arise. In the case of a building contract the property in the materials used does not pass to the other party to the contract as movable property. It would so pass if that is the agreement between the parties. But if there is no such agreement and the contract is only to construct a building, then the materials used therein would become the property of the other party to the contract only on the theory of accretion. Decision of the Madras High Court in *Gannon Dunkerley & Co. (Madras) Ltd. v. The State of Madras* [1954] (5 S.T.C. 216) affirmed.—THE STATE OF MADRAS *v.* GANNON DUNKERLEY & CO. (MADRAS) LTD. [1958] 9 S.T.C. 353 (S.C.).

—The expression “sale of goods” in Entry 48 in List II of Schedule VII of the Government of India Act, 1935, has the same meaning which it has in the Sale of Goods Act, 1930. In a building contract which is one, entire and indivisible, there is no sale of materials as such and it is therefore *ultra vires* the powers of the Provincial Legislature to impose tax on the supply of materials. But there might be contracts which might consist of two distinct agreements, one for the sale of materials and another for work and labour, and in such a case it would be competent to the State to impose tax on the sale of materials. Accordingly, when a question arises as to whether a particular works contract can be charged to sales tax, it will be for the authorities under the Act to determine whether the agreement in question is, on its true construction, a combination of an agreement to sell and an agreement to work, and if they come to the conclusion that such is its character, then it will be open to them to proceed against that part of it which is a contract for the sale of goods and impose tax thereon. *The State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd.* [1958] (9 S.T.C. 353) followed.—PANDIT BANARSI DAS BHANOT AND OTHERS *v.* THE STATE OF MADHYA PRADESH AND OTHERS [1958] 9 S.T.C. 388 (S.C.).

—The expression “sale of goods” in Entry 48 in List II of Schedule VII of the Government of India Act, 1935, has the same import which it bears in the Sale of Goods Act, 1930. In a building contract, which is one and indivisible, there is no sale of the materials as such. Consequently,

the Provincial Legislature had no power to impose a tax thereon under Entry 48. Rule 33 of the General Conditions of Contracts issued by the Government has not the effect of converting what is a lump sum contract for construction of buildings into a contract for the sale of materials used therein. Under the charging section [section 4(1)] of the East Punjab General Sales Tax Act, 1948, the tax is on the gross turnover in respect of sales effected after the coming into force of the Act and it includes the supply of materials in works contracts within the category of taxable turnover. If the supply of materials in construction works can be regarded as a sale, then a building contractor is engaged in the sale of materials and he would be within the definition of "dealer" under the Act. *The State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd.* [1958] (9 S.T.C. 353) followed.—FIRM OF M/S. PEARE LAL HARI SINGH v. THE STATE OF PUNJAB AND ANOTHER [1958] 9 S.T.C. 412 (S.C.).

—The petitioner-company with its registered office in Germany entered into a contract with a company having its registered office in Bihar for assembling and installing machinery, plant and accessories for a complete coke oven battery at Sindri in Bihar for an all-inclusive price. There was an express provision in the contract to the effect that all materials and plant brought by the petitioner on the site would immediately they were brought upon the site become the Bihar company's property. The Sales Tax Authorities sought to impose sales tax on the petitioner and thereupon the petitioner filed an application under Article 226 of the Constitution and contended that the definitions of "contract", "dealer", "goods", "sale" and "sale price" in the Bihar Sales Tax Act, 1947, were unconstitutional and beyond the competence of the Bihar Legislature in so far as it sought to impose a tax on building contracts for a lump sum: *Held*, that the petitioner had not made out a case for the grant of a writ of *certiorari* to quash the proceedings taken by the Sales Tax Authorities. *State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd.* [1958] (9 S.T.C. 353) referred to.—COKE OVEN CONSTRUCTION COMPANY (PRIVATE) LTD. v. THE STATE OF BIHAR AND OTHERS [1958] 9 S.T.C. 639 (Pat.) reversed by Supreme Court see below.

—Under a contract entered into by the appellant with a company, the appellant agreed to set up a complete coke oven battery ready for production as well as by-products plants at Sindri in the State of Bihar and to erect and construct buildings, plants and machineries and deliver and supply accessories and articles and render services described in the schedule for an all-inclusive price. The agreement provided that all

materials brought to the site would become the company's property, but if they were destroyed by fire, tempest or otherwise the loss would fall not on the company but on the appellant. The Sales Tax Authorities sought to impose sales tax on the appellant on the materials supplied in the execution of the contract on the ground that such supply was a sale. The appellant filed a petition under Articles 226 and 227 of the Constitution of India and contended that the provisions of the Bihar Sales Tax Act, 1947, in so far as they sought to tax supply of materials under the contract, were *ultra vires*. In the meantime the Supreme Court delivered judgment in *The State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd.* [1958] (9 S.T.C. 353). The High Court dismissed the petition on the ground that the facts on which the liability to tax depended had not been ascertained: *Held*, by the majority (DAS, KAPUR, HIDAYATULLAH and VENKATARAMA AYYAR, JJ.), that the proceedings had at all stages gone on the footing that the liability of the appellant arose under the contract and not otherwise, and as the contract was entire and indivisible for the construction of specified works for a lump sum and not a contract of sale of materials as such, the Sales Tax Authorities had no right to impose a tax on the materials supplied in execution of that contract. If a statute sets up a Tribunal and confides to it jurisdiction over certain matters and if a proceeding is properly taken before it in respect of such matters, the High Court should not, in the exercise of its extraordinary jurisdiction under Article 226, issue a prerogative writ so as to remove the proceedings out of the hands of the Tribunal or interfere with their course before it. But, when proceedings are taken before a Tribunal under a provision of law, which is *ultra vires*, it is open to a party aggrieved thereby to move the court under Article 226 for issuing appropriate writs for quashing them on the ground that they are incompetent, without his being obliged to wait until those proceedings run their full course. SHAH, J.—The High Court was right in declining to issue the writ prayed for inasmuch as before the facts on which the liability to tax depended were ascertained, the High Court could not be asked to assume that the transaction was in the nature of a pure works contract and to decide the question as to the liability of the appellant on that footing. *Coke Oven Construction Company (Private) Ltd. v. The State of Bihar and Others* [1958] (9 S.T.C. 639) reversed. *State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd.* [1958] (9 S.T.C. 353) followed.—CARL STILL G. m. b. H. & ANOTHER v. THE STATE OF BIHAR & OTHERS [1961] 12 S.T.C. 449 (S.C.).

—In the case of building contracts, the Sales Tax Authorities must determine whether the contract between the parties upon its true construction is a lump sum contract or whether it is a combination of two agreements, namely, an agreement to sell and an agreement to work. In the latter case, it will be open to the Sales Tax Authorities to proceed against that part of the contract which is a contract for sale of goods and impose a tax thereon. *State of Madras v. Gannon Dunkerley and Company (Madras) Limited* [1958] (9 S.T.C. 353) and *Pandit Banarsi Das Bhanot and Others v. State of Madhya Pradesh* [1958] (9 S.T.C. 388) followed.—*M. L. DALMIYA AND COMPANY LIMITED v. SUPERINTENDENT OF COMMERCIAL TAXES, JAMSHEDPUR, AND OTHERS* [1958] 9 S.T.C. 645 (Pat.).

—In the case of a building contract *simpliciter*, which is one and indivisible, the materials or goods that may be supplied by the building contractor in execution of the contracts would not fall within the definition of sale and as such are not assessable to sales tax under the Assam Sales Tax Act, 1947. The building contractor in such a case cannot be said to be a dealer within the meaning of the Act and he is not liable to be registered or assessed, simply because of the work which he carries on in execution of his contract of building. To the extent that the definition of "sale" or "sale price" has been enlarged in the Act to include materials supplied in execution of such contracts, without any separate agreement for them, they are *ultra vires* the Legislature. If, however, there exist distinct and separate contracts, one for the transfer of materials for money consideration and the other for payment of remuneration for services and for work done, the position would be different; and in that case the department would be competent to levy tax on the sale and supply of the materials which in fact were supplied under different agreements altogether independently of the building contract. *State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd.* [1958] (9 S.T.C. 353) followed.—*M. L. DALMIYA AND Co. LTD. v. STATE OF ASSAM AND OTHERS* [1959] 10 S.T.C. 41 (Assam).

—The expression "sale of goods" in Entry 48 of List II of the Seventh Schedule in the Government of India Act, 1935, bears the same import as it does in the Sale of Goods Act, 1930, and in a building contract there is no sale of materials as such. The State Legislature has, therefore, no power while legislating under Entry 48 to impose a sales tax on the value of such building materials on the basis that such a sale is included or implied in the building contract. When contractors use building materials

in connection with the constructions which they have undertaken to construct, unless there is a specific and distinct contract that such building materials are being sold, there is no sale of the materials. So far as the building or works contracts and the materials used in connection with those contracts are concerned, the contractors are not "dealers" within the meaning of the U.P. Sales Tax Act because they cannot be held to have sold the materials. The value of the building materials used in connection with the construction contracts cannot be included in the turnover of the contractor unless by the contract of the parties such building materials are specifically contracted to be sold. The question whether they are or are not separately shown in the bills is immaterial. It is entirely immaterial whether the building materials used in connection with the contract were supplied through the Development Board or through the P.W.D. or not. *The State of Madras v. Gannon Dunkerley and Co. (Madras) Ltd.* [1958] (9 S.T.C. 353; A.I.R. 1958 S.C. 560) and *Firm of M/s. Peare Lal Hari Singh v. The State of Punjab* [1958] (9 S.T.C. 412; A.I.R. 1958 S.C. 664) followed.—*FORD & MACDONALD LTD., KANPUR, AND OTHERS v. COMMISSIONER OF SALES TAX, UTTAR PRADESH* [1959] 10 S.T.C. 70 (All.).

Contract for providing and fixing special type steel windows in building constructed for Government—Whether a contract of work—Liability to sales tax.—The assessee carrying on the business of fabricating steel doors, windows, sashes and works of allied nature entered into a contract with the Government of India for providing and fixing special type steel windows of four different specifications in the building constructed to house a central office. The question was whether the assessee was liable to pay sales tax on the amount received by it on this contract: *Held*, that on the true construction of the terms of the contract, it was an indivisible contract of work and not of sale and the assessee was therefore not liable to sales tax.—*MAN INDUSTRIAL CORPORATION LTD. v. THE STATE AND ANOTHER* [1966] 17 S.T.C. 152 (Raj.).

Petition under Article 226 for declaration that imposition of sales tax on building contracts is illegal—No claim for refund of tax paid—Proper order to be passed.—The appellant-company carrying on business as a building contractor and registered as a dealer under the Orissa Sales Tax Act, 1947, had entered into with the State of Orissa certain contracts for construction of buildings and dams. In April, 1954, the Sales Tax Officer made a consolidated assessment on the

appellant for some quarters and realised the amount assessed as sales tax by deducting it out of the outstanding bills of the company. Subsequently, relying on the judgment of the Madras High Court in *Gannon Dunkerley & Co. Ltd. v. State of Madras* [1954] (5 S.T.C. 216), the appellant applied under Article 226 of the Constitution for a writ of *mandamus* or direction restraining the State from levying sales tax from the appellant. No relief for refund of tax was, however, claimed by the appellant. The High Court, following the decision of the Supreme Court in *State of Madras v. Gannon Dunkerley & Co. Ltd.* [1958] (9 S.T.C. 353), held that the assessment of sales tax in respect of building contracts was not in accordance with law and that under section 14, the appellant was not entitled to the refund of tax collected under orders made more than 24 months before the date of the application, but was entitled to refund of tax paid under orders made within that period. The appellant appealed to the Supreme Court: *Held*, (1) that as a claim for refund was never made in the High Court by the appellant, the High Court was not competent to pass that order; (2) that section 14 had no application to adjustments of account made by the State, without the assent of the appellant, and there was no evidence that the adjustments were assented to by the appellant; (3) that the State was not entitled to adjust any amount of sales tax against outstanding bills of the appellant by debiting tax liability and if any adjustments had been made since the date of the consolidated assessment order the account should be reopened and readjusted on the footing that sales tax in respect of building contracts was not payable.—*G. S. DUGAL AND CO. (PRIVATE) LTD. v. THE STATE OF ORISSA* [1962] 13 S.T.C. 57 (S.C.).

Whether contracts indivisible.—Where in a building contract relating to certain constructions for the Public Works Department, one of the clauses in the agreement provided as follows:—"All work and materials brought and left at site by the contractor or by his orders for the purpose of forming part of the works are to be considered to be the property of the Governor of Bihar and the same are not to be removed or taken away by the contractor or any other person without the special permission in writing of the Executive Engineer, but the Governor of Bihar will not be liable for any loss or damage which may happen to or in respect of any such work or materials either by the same being lost or stolen or injured by weather or otherwise": *Held*, that under the agreement property in the materials passed to the Governor of Bihar not on the theory of accretion but the moment the materials were

brought to the site and therefore it would be quite proper to levy sales tax on the turnover less permissible deductions. Where there was no clause in another agreement by virtue of which the property in the materials supplied by the contractor would pass to the opposite party other than by way of accretion on construction of the building and the items of tender were for finished articles to be fitted in the building and not for supply independently thereof: *Held*, that in regard to the payments under this agreement, the contractor would not be liable to sales tax.—*NEHCAL SINGH LAKHMIR SINGH v. THE STATE OF BIHAR* [1960] 11 S.T.C. (T.D.) 5.

Jurisdiction to assess—*Decision of High Court declaring provision ultra vires the Constitution—Appeal to Supreme Court against that decision—Jurisdiction of authorities to make assessment under that provision pending decision—Bengal Sales Tax Rules, 1941, Rule 2(2).*—*DINESH CHANDRA BHATTACHARYA AND OTHERS v. MEMBER, BOARD OF REVENUE, WEST BENGAL AND OTHERS* [1967] 19 S.T.C. 224 (Cal.).

Purchase tax—Building contractor—No turnover of sales—Purchase of building materials from unregistered dealers for execution of contract works—Liability to purchase tax under section 7, Madhya Pradesh General Sales Tax Act, 1958.—*GANESH PRASAD DIXIT v. COMMISSIONER OF SALES TAX, MADHYA PRADESH* [1966] 17 S.T.C. 14 (M.P.).

Sale value of materials left over after completion of constructions—Whether liable to tax.—The assessee-company carrying on the business of construction of buildings, bridges etc., sold materials such as cement, casuarina poles and hardware goods, which were left over after completion of the constructions and collected sales tax from the purchasers. The assessee claimed exclusion of these sales from their taxable turnover on the ground that they were not dealers in buying and selling those articles: *Held*, that the sales were liable to be included in the taxable turnover inasmuch as the sales were connected with the nature of the business carried on by the assessee and the entire course of business activity of the assessee was intended to be engaged in with a profit-motive. *Gannon Dunkerley and Company (Madras) Private Limited v. The Government of Madras* [1964] (15 S.T.C. 40) and *A. Ebrahim and Company v. The State of Bombay* [1962] (13 S.T.C. 877) relied on.—*THE STATE OF ANDHRA PRADESH v. GANNON DUNKERLEY & CO., MADRAS (PRIVATE) LTD.* [1965] 16 S.T.C. 120 (A.P.).

Suit—Mistake of law—Indivisible works contracts—Tax assessed and paid by mistake—Suit for

recovery—Whether barred—Limitation—Sales Tax Authorities—Scope of jurisdiction.—K. S. VENKATARAMAN AND CO. (P.) LTD. v. THE STATE OF MADRAS [1966] 17 S.T.C. 418 (S.C.).

Law in Part C States.—The Bengal Finance (Sales Tax) Act, 1941, as extended to Delhi was enacted not by a State Legislature in exercise of the power conferred by Entry 54 in List II of Schedule VII of the Constitution but by Parliament by virtue of the authority granted by Article 246 (4) of the Constitution, and it was within the competence of Parliament acting under that Article to impose a tax on the supply of materials in building contracts, even though there was no sale of those materials within Entry 54. *The State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd.* [1958] (9 S.T.C. 353) distinguished. Article 248 has reference to the distribution of legislative powers between the Centre and the States mentioned in Parts A and B under the three Lists in Schedule VII, and it provides that in respect of matters not enumerated in the Lists including taxation, it is Parliament that has power to enact laws. It has no application to Part C States, for which the governing provision is Article 246 (4). Moreover, when a notification is issued by the appropriate Government extending the law of a Part A State to a Part C State, the law so extended derives its force in the State to which it is extended from section 2 of the Part C States (Laws) Act, 1950, enacted by Parliament. The result of a notification issued under that section is that the provisions of the law which is extended become incorporated by reference, in the Act itself, and therefore a tax imposed thereunder is a tax imposed by Parliament. What is intended by section 2 of Part C States (Laws) Act, 1950, is that with reference to different topics of legislation on which the several States in Part A had enacted different statutes, the authority acting under section 2 should have the discretion to extend that statute in any of the Part A States which is best suited to the conditions in the particular Part C State to which it is to be extended, and that, further, the authority should have the power to extend it with suitable "restrictions and modifications". It could not have been intended by this section that the authority concerned should take upon itself to examine the *vires* of each and every one of the provisions in the statute, and then extend only such of them as it considers to be valid. The expression "enactment which is in force in a Part A State" in section 2 must be construed as meaning "statute which is in operation in a Part A State" as distinct from a statute which

had been repealed and it cannot be interpreted as having reference to individual sections or provisions of a statute. Moreover as the authority conferred by section 2 on the Government to extend enactments in force in Part A State includes a power to do so with restrictions and modifications, it was within the competence of the Government acting on this provision to incorporate on its own authority provisions taxing building contracts by way of modification of the Bengal Finance (Sales Tax) Act, 1941. The modification made by the Central Government, assuming that that was its true character, did not involve any change of policy underlying the Bengal Finance (Sales Tax) Act, 1941. It gave effect to the policy of that enactment which was to bring construction contracts within the ambit of the taxation powers of the State, and which failed only for want of legislative authority. Whether the notification was viewed as one extending a subsisting statute to Delhi or as extending it with modifications so far as the taxing provisions were concerned, it was *intra vires* section 2.—MITHAN LAL AND OTHERS v. THE STATE OF DELHI AND OTHERS [1958] 9 S.T.C. 417 (S.C.).

—*State of Vindhya Pradesh—Levy of sales tax on building contracts—Validity.*—The Central Provinces and Berar Sales Tax Act, 1947, was validly extended to Vindhya Pradesh by the Central Government and the power of the Central Government to extend any Act of a Part A State to any Part C State carried with it the plenary powers of Parliament. Therefore that Act did not suffer from the defects pointed out by the Supreme Court in *State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd.* [1958] (9 S.T.C. 353) and the levy of sales tax in the former State of Vindhya Pradesh on building materials supplied by a contractor in the construction of buildings, roads and bridges was valid. The different sales tax laws in different parts of Madhya Pradesh could be sustained on the ground that the differentiation arose from historical reasons. A geographical classification based on historical reasons does not violate the provisions of Article 14 of the Constitution.—BHAIYALAL SHUKLA v. THE STATE OF MADHYA PRADESH AND OTHERS [1962] 13 S.T.C. 236 (S.C.).

—*Provisions for determining cost of materials—Whether ultra vires Legislature.*—Where the petitioners were assessed to sales tax on payments received by them for execution of works contracts under the percentage basis in rule 7 of the Vindhya Pradesh Sales Tax Rules, 1954: *Held*, that as the actual cost of materials in every case

was not a fixed percentage of the total payment received by the petitioners, under colour of levying a tax on the sale of goods a tax was also levied on the cost of labour, cost of supervision and contractor's profit which was *ultra vires* the State Legislature. Accordingly the definition of "sale price" in section 2 (h) (ii) of the Madhya Pradesh Sales Tax Act, 1947, as extended to the State of Vindhya Pradesh and rule 7 of the Vindhya Pradesh Sales Tax Rules, 1954, were invalid. *Pandit Banarsi Das v. State of Madhya Pradesh* [1955] (6 S.T.C. 93) followed.—*BADRUDDIN AND OTHERS v. THE STATE OF VINDHYA PRADESH AND ANOTHER* [1957] 8 S.T.C. 161.

—*Rule-making authority—Power to fix percentage of turnover as representing cost of materials—Validity of Rule 28, Delhi Sales Tax Rules, 1951.*—By section 2(h) of the Bengal Finance (Sales Tax) Act, 1941, as extended to Delhi, prior to its amendment in 1959, the Legislature has delegated the law-making power to the executive without providing any guiding principles or laying down any standards. The executive has been given a free hand to fix any part of the amount received on account of any building contract to represent the price of goods. The basis adopted by the executive in rule 28 of the Delhi Sales Tax Rules, 1951, may result in taxation of something which is not truly a sale of goods or, in other words, taxation of not only the amount representing the sales but other amounts as well. Rule 28 is therefore *ultra vires* the rule-making authority.—*S. B. GURBAKSH SINGH v. SALES TAX OFFICER, WARD No. 5, DELHI, AND ANOTHER* [1966] 18 S.T.C. 500 (Punj.).

—*Invalidity of rule 28, Delhi Sales Tax Rules, 1951—Whether prevents officer from accepting offer of assessee to apply the rate provided in that rule—Scope of power of review under section 20(4)—Limitation in section 11(2a)—Whether should be calculated from end of year.*—Where the assessee, a firm of building contractors, were unable to furnish the details of the labour involved for the execution of the works contracts, and voluntarily offered to take exemption at the rate of 30 per cent. as provided in rule 28 of the Delhi Sales Tax Rules, 1951, and the Sales Tax Officer accordingly made an assessment on that basis: *Held*, that the invalidity of rule 28 did not render the assessment illegal, inasmuch as in the absence of details the assessing authority would have been competent to make a best judgment assessment and there was nothing wrong in the officer accepting the offer made by the assessee. Following a decision of the Chief Commissioner that building contractors were not liable to sales tax the Sales Tax Officer did not assess the assessee to sales tax. The Supreme Court subsequently reversed

that position and thereupon the Sales Tax Officer issued notice to the assessee calling upon them to show cause why the order should not be reviewed under the Act: *Held*, that there were legitimate grounds to review the order. Even if the taxable period be a quarter, the period of limitation provided in section 11(2a) has to be calculated from the end of the relevant year.—*PREM RAJ AND SONS v. THE SALES TAX OFFICER, WARD No. 9, DELHI, AND ANOTHER* [1967] 19 S.T.C. 531 (Punj.).

Earlier decisions of High Courts.—The legislative power of the Provincial Legislature under the Government of India Act, 1935, to levy a tax on the sale of goods is confined and restricted only to the transaction of sale as understood by the Parliament of the United Kingdom in the law relating to the sale of goods and any attempt by the Legislature to tax under the guise of or under the pretence of such a power transactions, which are wholly outside it, will be *ultra vires* and invalid. In the case of building contracts, where the amount is to be paid to the contractor either on a lump sum basis or according to a schedule of rates after measuring the quantities, unless there is a contrary intention specifically to pass the property in the materials as and when they are brought to the site, the property in the materials passes only when they are fixed to the building whether they are bricks, doors or door frames or other materials. There is no element of sale of materials in such a contract, as the contract is not in substance and in effect a contract to sell the materials as goods for a price stipulated between the parties, the ownership in which is to pass in accordance with the principles applicable to them and laid down in the Sale of Goods Act. The ultimate result of executing such a contract is to bring into existence immovable property and not movable property, and the contract therefore does not become a contract relating to sale of goods but it is only a contract to build. If the amendments relating to taxing of works contracts introduced in 1947 by the Madras Legislature are intended to catch in the net of tax the aforesaid building contracts, to that extent the amendments are *ultra vires* the Madras Legislature. Having regard to the terms of particular contracts, there may be an intention to pass the ownership in the materials for a price agreed upon between the parties, in which case there might be an element of sale of goods.—*GANNON DUNKERLEY & Co. (MADRAS) LTD. v. THE STATE OF MADRAS* [1954] 5 S.T.C. 216 (Mad.). On appeal to Supreme Court this decision was affirmed. See [1958] 9 S.T.C. 353 (S.C.).

—The imposition of sales tax on the supply of building materials used in the execution of

building contracts was not *ultra vires* the Provincial Legislature. But the definition of "sale price" in sec. 2(h)(ii) of the C.P. and Berar Sales Tax Act, 1947, and rule 4 of the C.P. and Berar Sales Tax Rules, 1947, were beyond the powers of the Legislature, inasmuch as they involved taxation on an artificial basis having no relevance to the price of the goods sold or supplied by a builder. The definitions of "contract", "dealer", "goods", "sale" and "turnover" in section 2 of the C.P. and Berar Sales Tax Act, 1947, which not only bring within the taxing field a "sale" unmixed with any other transaction but also pick out a sale from the composite transaction of a building contract were not beyond the powers of the Provincial Legislature. When Entry No. 48 in List II of the Seventh Schedule of the Government of India Act, 1935, was framed it conferred on the Provincial Legislature powers of the widest amplitude to tax the sale of goods in all its aspects and forms. The necessary condition for the impost, however, was that there should be a sale of goods. The selection of the taxable event and the severance of transactions of sale from other transactions in which they might be embedded was a necessary part of the power. If a building contract is not split up into its component parts, that is to say, material and labour, in legislative practice relating to the ordinary regulation of sale of goods, there is no warrant for holding that it cannot be so split up even for purposes of taxation. Building materials are goods and there is payment for materials although it is not made separately but as part of a larger amount. The supply of goods is tantamount to the sale thereof. Where the petitioner filed a petition under Article 226 of the Constitution challenging the validity of the provisions of the C.P. and Berar Sales Tax Act, 1947, imposing sales tax on the supply of building materials used in the execution of building contracts the Court was not prevented from issuing a writ on the ground that alternative remedies existed under the Sales Tax Act. If the provisions were found to be *ultra vires* the Court could issue a writ.—*PANDIT BANARSI DAS v. STATE OF MADHYA PRADESH AND OTHERS* [1955] 6 S.T.C. 93 (Nag.).

—The construction of a building or the repair of a car comes under the definition of works contract with taxable turnover under the Mysore Sales Tax Act. Although the material that is supplied for construction of a building merges in the immovable property, its value has to be apportioned for the purposes of taxation as contemplated in the Mysore Sales Tax Act. The contract to supply labour and work cannot however be taxed under the Act. The meaning

of "sale" in the Sales Tax Act cannot be confined or limited to the meaning of that expression as understood in the Sale of Goods Act. The petitioner was a building contractor. In the absence of proof regarding the exact value of labour expended in the construction of buildings, a reduction of 30 per cent. on the aggregate value of the bills drawn by the petitioner was allowed towards labour by the assessing officer and the balance was adopted as the basis for fixing the turnover for purposes of determining the value of material supplied and used in the contracts: *Held*, that, in the circumstances, the allowance made by the officer was neither inadequate nor unreasonable. *Gannon Dunkerley & Co. v. State of Madras* [1954] (5 S.T.C. 216; A.I.R. 1954 Mad. 1130) dissented from.—*MOHAMED KHASIM v. THE STATE OF MYSORE* [1955] 6 S.T.C. 211 (Mys.).

—The provisions of Explanation (1)(i) to section 2(m) of the Hyderabad General Sales Tax Act, 1950, and rule 5(3) of the Rules made thereunder which authorise the levy of sales tax on the turnover of the materials used in a works contract have not been made in the proper exercise of legislative power conferred by Entry 54 of List II of Schedule VII of the Constitution of India and are therefore *ultra vires* the Legislature. Where under a works contract a person undertakes to build a particular building or to make a particular thing, the materials involved in the building or making of the finished product, are not the subject-matter of sale because there is no agreement to sell the materials nor is the price of the goods fixed nor is there a passing of the title in these goods as such, except as part of the building or the thing in which they are embedded. The building contractor in such a case cannot be said to have sold any goods or materials used in the building in order to bring them within the power of taxation conferred on a State by Entry 54 of List II of Schedule VII. The dealer or a trader who is engaged in the business of buying and selling or supplying goods must be engaged in a continuous or periodical activities in the year of assessment with a view to earn profit, for in a transaction of sale there is in contemplation the making of profit. In a works contract the materials which make up the finished product or building are generally purchased from an outside agency, unless the builder or manufacturer is himself the producer of the material so used and are not sold to the person for whom the building is being built or article is made for profit. In this view of the matter also the assessee who simply supplies building materials cannot be said to be a dealer within the meaning of the Act so as to be taxed

on the materials used in the works contract. If in the discharge of a contract of service ownership of goods passes which is inseparably integrated with the contract of service, the transaction is not a sale, though the finished product may be the subject-matter of a sale. The word "supply" which occurs in the definition of casual trader and dealer in section 2(c) and (e) cannot be strictly interpreted in its literal and absolute sense, but must be given the qualified meaning which it deserves in the context according to the well-known rule of interpretation *noscitur a sociis*. Where the words or expressions used in a legislative list have to be construed the rule of construction of *pari materia* statutes is not strictly applicable nor is it a conclusive or infallible test. The Court must in such circumstances try to ascertain the scope and ambit of the power intended to be conferred by the entry and consequently, though the Court may resort to judicial pronouncements and legislative practice prevailing at the time when the Constitution was promulgated, the intention of the framers of the Constitution must be ascertained by reference to the plain meaning of the words and expressions used in it. But if the words or expressions have acquired legal currency and have been given a definite meaning in legal parlance it is safe to presume that the draftsmen or the framers could not but have intended to use them in the same sense. It is not easy to break away from the legal conceptions or meaning of certain legal phrases which are well known under the law existing at the time when the Constitution was promulgated. All things being equal, it is permissible to have recourse to the state of law as it existed at the time of the Constitution for purposes of determining the meaning of any expression used in any of the entries of the legislative list. *Pandit Banarsi Das v. State of Madhya Pradesh and Others* [1955] (6 S.T.C. 93) dissented from on the main point. *Gannon Dunkerley & Co. v. State of Madras* [1954] (5 S.T.C. 216) and *Sales Tax Officer, Pilibhit v. Budh Prakash Jai Prakash* [1954] (5 S.T.C. 193; A.I.R. 1954 S.C. 459) followed.—JUBILEE ENGINEERING CO. LTD. v. SALES TAX OFFICER, HYDERABAD CITY, AND OTHERS [1956] 7 S.T.C. 423 (Hyd.).

—The imposition of sales tax on the supply of building materials used in the execution of building contracts was not beyond the powers of the State Legislatures and therefore the definitions in section 2(o), (e), (f) and (h) of the Rajasthan Sales Tax Act, 1954, were valid and were not *ultra vires* the Rajasthan Legislature. But Explanation (i) to section 2(t), and rule 7 of the Rajasthan Sales Tax Rules, were beyond

the powers of the Legislature inasmuch as they allowed the executive to fix a sale price on an artificial basis without any relation whatsoever to the real value of the materials supplied in building contracts. As these are separable they can be struck down without in any way affecting the rest of the Act. There is no reason for confining the general words of Entry 54 or List II of the Seventh Schedule of the Constitution of India to those cases only where there is a contract as such for the sale of goods and a settlement of price as such for particular goods. The words of the entry are general and wherever, even on a composite transaction, a sale of goods takes place the Legislature has the competence to separate that transaction and to treat it as a sale of goods liable to tax. There is a sale of the materials used in a building contract at some stage or other by the contractor to the person who has given the contract as otherwise there is no way in which the property in the materials would pass to the person from the contractor. All that section 2(o) has done is to separate this element of the sale of materials from the composite sale which must be deemed to have taken place when the property in the finished product passes from the contractor, on payment of a certain sum of money, to the person who has given the contract. It is open to the Legislature to make special provisions for the taxation of such a transaction. The definition of a "dealer" in the Act is very wide and includes persons who in the course of their business as building contractors supply goods to those who give them contracts. It is not the date of the contract which is material in determining whether the tax is payable but it is the date on which the sale is deemed to have taken place under section 2(o). In the case of building contracts the sale must generally be deemed to take place when the contract is completed, unless there are terms to the contrary in the contract itself, when those terms will prevail. *Gannon Dunkerley and Co. (Madras) Ltd. v. The State of Madras* [1954] (5 S.T.C. 216; A.I.R. 1954 Mad. 1130) dissented from. *Pandit Banarsi Das v. State of Madhya Pradesh and Others* [1955] (6 S.T.C. 93) relied on.—BHURAMAL AND OTHERS v. STATE OF RAJASTHAN [1957] 8 S.T.C. 463 (Raj.).

—The Bengal Finance (Sales Tax) Act, 1941, in so far as it seeks to bring within the net of taxation goods including materials, commodities and articles supplied in the execution of the construction, fitting out, improvement or repair of any building, road, bridge, or other immovable property and in so far as it declares it to be a sale of goods and in so far as it seeks to realise

taxes upon what is called the "sale price" thereof, is *ultra vires* the Provincial and State Legislatures and is void. Further rule 2 of the Bengal Sales Tax Rules, 1941, framed under section 26(1) of the Act, which provides for the fixation of the money consideration for what is called the price of goods supplied in the execution of the building contract is in excess of the powers of the Legislature and the Government and is *ultra vires* and void. There having existed at the time of the enactment of the Government of India Act, 1935, or the Constitution, a well-established definition of the transaction known as "sale of goods" in the Indian Sale of Goods Act, which in its turn is based on the English Sale of Goods Act, it would be proper to interpret the expression "sale of goods" in entry 48 of the Government of India Act, 1935, as also in entry 54 of the Constitution of India, in the sense in which it was used in the Sale of Goods Act. In the case of a building contract, unless there is a contract to the contrary, the contractor cannot be said to have entered into a transaction for the sale of the building materials to the owner. There is no agreement between the parties for a transfer of property in such goods for a price. It is not that a transfer of property does not take place in course of construction. The transfer takes place by virtue of a different legal principle, namely, accession. Until building materials are actually affixed to the building, in the absence of an agreement to pass the property in the materials on delivery, the property therein remains in law in the builder, notwithstanding that they may have been approved by the employer or his agent or brought on site. The property in the materials will pass only when they are affixed to the building, whether it is bricks, doors or door frames or other materials. The contract is treated as an entire contract to build, and the price is to be paid on a lump-sum basis or the amount ascertained according to the schedule of rates after measuring the quantity. The ultimate result of executing such a contract is to bring into existence immovable property and not movable property and the contract does not become a contract relating to sale of goods but is a contract to build. In a composite transaction, the Legislature for purposes of taxation can break it into its components, but under the circumstances prevailing in this case, the Provincial or the State Legislature could not, after having done so, declare a transaction as sale of goods which is not so under the Sale of Goods Act. It could do so after having promulgated a legislation altering the Sale of Goods Act itself, and after obtaining the requisite assent under

section 107 of the Government of India Act, 1935, or Article 254 of the Constitution. The cardinal rule of interpretation is that words should be read in their ordinary, natural and grammatical meaning, subject to this rider that in construing words in a constitutional enactment conferring legislative power, the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude. But if the words or expressions used have acquired legal currency and have been given a definite meaning in legal parlance, it is safe to presume that the draftsmen or the framers could not but have intended to use them in the same sense. In the case of a legislative entry conferring power of taxation, if the subject-matter is enacted but there exists no legal definition of it, it would be competent on the part of the State Legislature to give it a wide meaning and it would not necessarily be governed by mere judicial decisions or interpretation of any and every fiscal statute. If the subject-matter itself has been defined by some statute that definition should prevail. *Gannon Dunkerley & Co. (Madras) Ltd. v. State of Madras* [1954] (5 S.T.C. 216; A.I.R. 1954 Mad. 1130) and *Jubilee Engineering Co. Ltd. v. Sales Tax Officer, Hyderabad City, and Others* [1956] (7 S.T.C. 423; A.I.R. 1956 Hyd. 76) relied on. *Pandit Banarsi Das v. State of Madhya Pradesh* [1955] (6 S.T.C. 93) dissented from on the main point.—*DUKHINESWAR SARKAR & BROS., LTD. v. COMMERCIAL TAX OFFICER AND OTHERS* [1957] 8 S.T.C. 478 (Cal.).

Part B States—Levy of sales tax on works contracts under Travancore-Cochin Act—Validity.—The Travancore-Cochin General Sales Tax Act, 1125, received the assent of His Highness the Rajpramukh on the 5th January, 1950, and was published in the Government Gazette dated the 17th January, 1950. The Government of India Act, 1935, had no application to either Travancore or Cochin and the validity of the Travancore-Cochin General Sales Tax Act, 1125, which was a pre-Constitution enactment, was not depended on any of the entries in the Seventh Schedule to the Constitution. The partition of legislative power in the Constitution of India, 1950, is for the purposes of legislation subsequent to the Constitution and it is not correct to say that the validity of an Act passed by a competent Legislature prior to the Constitution has also to be tested in the light of the legislative distribution of powers effected by the Seventh Schedule. Sales tax in respect of works contracts was being levied immediately before the commencement of the Constitution under the provisions of the Cochin General Sales Tax Act, 1121, in the Cochin area

of the State and under the provisions of the Travancore General Sales Tax Act, 1124, in the Travancore area of the State and those Acts were repealed only by section 27 of the Travancore-Cochin General Sales Tax Act, 1125, when it came into force on the 30th May, 1950. Therefore in view of the specific provision of Article 277 of the Constitution of India, tax on works contracts can continue to be levied after the commencement of the Constitution irrespective of the partition of the legislative power effected by Article 246 and the entries in the three Lists of the Seventh Schedule. Where the Board of Revenue has not fixed the actual percentage of admissible deductions in respect of works contracts under rule 4(3) of the Travancore-Cochin General Sales Tax Rules, 1950, but the petitioner was allowed the maximum percentage as prescribed by the rule: *Held*, that the non-fixation of maximum percentages by the Board of Revenue as permitted by rule 4(3) was not fatal to the assessment and was not sufficient to compel an interference under Article 226 of the Constitution. *Obiter*:—The Board of Revenue, constituted by the Travancore-Cochin Board of Revenue Act, is not a body corporate but only a part of the Government of the State. Therefore it could not be said that the duty cast upon such a Board by sub-rule (3) of rule 4 amounts to a delegation of the rule-making power of the Government under section 24 of the Travancore-Cochin General Sales Tax Act, 1125.—*GANNON DUNKERLEY AND CO., MADRAS (PRIVATE) LTD. v. SALES TAX OFFICER, MATTANCHERRY* [1957] 8 S.T.C. 347 (Ker.).

—*Levy of sales tax in Kerala (Part B State)—Validity of provisions.*—The petitioners challenged the constitutional validity of the provisions of the General Sales Tax Act, 1125, and the Rules framed thereunder which imposed sales tax on works contracts, on the following grounds:—(1) They were discriminative and were, therefore, violative of Article 14 of the Constitution; (2) As works contracts before and after 1956 could not be taxed in the Malabar area of the Kerala State, imposition of tax on works contracts in the remaining areas of the same State resulted in the residents of one area being favoured which was violative of Article 14; (3) The powers of the State's executive were circumscribed by Article 162, with the result that the State's taxing authorities could not collect tax on works contracts, inasmuch as such tax was not included in List II or List III of the Constitution; (4) Although the Act was passed on 17th January, 1950, as the rules were framed after 26th January, 1950, the rules were void and inoperative:

Held, rejecting all the grounds, that the Act and the Rules framed thereunder were not invalid. An enactment is not arbitrary if it can be justified as based on rational classification, and to satisfy that test, two things are required. One is an intelligible differentia between those grouped together from those thereby left out, and the next is that the differentia should have a rational relation to the object of the legislation. A contract by which one person promises to make something, which, when made, will not be his absolute property, and by which the other person promises to pay for the work done, is a contract for work, although the payment may be called a price for the thing and although the materials, of which the thing is made, may be supplied by the maker. As there is a well settled distinction between works contract and sale of goods, there is an intelligible differentia between earnings through the former from those by the latter. Every classification is in some degree likely to produce some inequality, and mere production of inequality is not by itself enough. The inequality, in order to offend the Constitution, must be actually and palpably unreasonable. The argument that notwithstanding the continuance of the General Sales Tax Act, 1125, under Article 372 of the Constitution, the taxing authorities in Kerala State could not collect the tax, because the State's executive powers were circumscribed by Article 162 which limited the exercise to subjects covered by the items in List II of the Seventh Schedule was without force, because it overlooked Article 277. Article 14 is not violated where discrimination is due to the territorial classifications. The continuance under the Constitution, of the levy would entail the incidental power of framing the necessary Rules and therefore the Rules framed under the Act were not invalid. *Jubilee Engineering Co. v. Sales Tax Officer* [1956] (7 S.T.C. 423; A.I.R. 1956 Hyd. 79), and *Saraswati Printing Press v. Commissioner of Sales Tax* [1959] (10 S.T.C. 286) distinguished. *Kenchappa v. Sales Tax Officer* [1957] (8 S.T.C. 329; A.I.R. 1957 Mys. 45) dissented from.—*SOUTH INDIA CORPORATION (PRIVATE) LTD. v. THE SECRETARY, BOARD OF REVENUE, TRIVANDRUM* [1961] 12 S.T.C. 344 (Ker.): Reversed by the Supreme Court in [1964] 15 S.T.C. 74. See below.

Part B States—Power to continue levy of sales tax on works contracts—Effect of agreement between Union and Travancore-Cochin State in the matter of federal financial integration in that State—Whether agreement abrogates provisions of Articles 277 and 372.—An agreement can be entered into between the Union and the States in terms of Article 278 of the Constitution of India abrogating or

modifying the power to continue the levy of taxes preserved to the States under Article 277. Under the agreement entered into between the President of India and the Rajpramukh of the State of Travancore-Cochin on 25th February, 1950, the Union agreed to recoup the loss in revenue incurred by that State by reason of the constitutional transference of that State's power of taxation in respect of certain items to the Union List and thereafter that State ceased to have the power to levy any tax in respect of the subjects so transferred. The agreement was a comprehensive one and took into consideration the entire loss caused to the State by reason of some of its sources of revenue being transferred under the Constitution to the Union. It would be unreasonable to construe the agreement so as to exclude from its operation certain taxes which the State was authorised to levy for a temporary period. Although Article 278 was omitted by the Constitution (Seventh Amendment) Act, 1956, that amendment was only prospective in operation and could not affect the validity of the agreement. Article 277 excludes the operation of Article 372, and an agreement in terms of Article 278 also overrides Article 372. Therefore notwithstanding the fact that a pre-Constitution taxation law continues in force under Article 372, the Union and Part B States can enter into an agreement in terms of Article 278 depriving the State law of its efficacy. Therefore during the period covered by the agreement dated 25th February, 1950, between the President of India and the Rajpramukh of the State of Travancore-Cochin, the State of Travancore-Cochin ceased to have any power to impose sales tax in respect of "works contracts". Decision of the High Court of Kerala in *South India Corporation (Private) Ltd. v. The Secretary, Board of Revenue, Trivandrum, and Another* [1961] (12 S.T.C. 344) reversed.—*SOUTH INDIA CORPORATION (P.) LTD. v. SECRETARY, BOARD OF REVENUE, TRIVANDRUM, AND ANOTHER* [1964] 15 S.T.C. 74 (S.C.).

Part B States—Levy of sales tax on percentage basis—Validity.—The Mysore Sales Tax Act, 1948, was passed prior to the Constitution and the power to enact it was not derived as in Madras or Central Provinces from any entry in the Schedule to the Government of India Act, 1935. The provisions of the Mysore Act cannot therefore be impugned on the ground of these not being within the ambit of the entry or as not in harmony with the legislative policy of the Government of India Act. The levy of sales tax on moneys realised for execution of works contracts in accordance with the provisions of the Mysore Sales Tax Act and the rules framed

thereunder is arbitrary and leads to unreasonable discrimination. They are therefore repugnant to the rules of natural justice and Article 14 of the Constitution.—*KENCHAPPA AND OTHERS v. SALES TAX OFFICER, FOURTH CIRCLE, BANGALORE* [1957] 8 S.T.C. 329 (Mys.).

Provisions for determining cost of materials—Whether ultra vires Legislature.—The artificial test laid down in the Travancore-Cochin General Sales Tax Act, 1125, to determine the amount for which goods are sold in a works contract and the rule prescribing the proportion are not within the competence of the State Legislature. Sub-rule (3) of rule 4 of the Rules and that portion of the definition of the expression "turnover" given in section 2(k) of the Act which supports such a rule are *ultra vires* of the powers of the State Legislature. *Pandit Banarsi Das v. State of Madhya Pradesh* [1955] (6 S.T.C. 93) followed.—*C. DAMODARAN v. THE AGRICULTURAL INCOME-TAX AND RURAL SALES TAX OFFICER, DEVICOLAM, AND OTHERS* [1956] 7 S.T.C. 417 (Trav.-Co.).

Materials used in construction—Liability to tax.—The petitioner was assessed to sales tax under the Travancore-Cochin General Sales Tax Act, 1125, in respect of the goods supplied in the execution of works contracts by taking the assessable turnover at 70 per cent. of the amount of the contracts: *Held*, that the definitions in Travancore-Cochin General Sales Tax Act, 1125, extended the operation of the Act to the supply of materials used in building contracts and the assessment was therefore proper. *State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd.* [1958] (9 S.T.C. 353) distinguished.—*GAMMON INDIA PRIVATE LTD., BOMBAY v. SALES TAX OFFICER, IRINJALAKUDA* [1962] 13 S.T.C. 50 (Ker.).

BULLION

Bullion and specie—Act imposing tax—No recommendation from Governor under Article 207—Subsequent assent of Governor—Validity of Act—Bengal Finance (Sales Tax) (Second Amendment) Act, 1955.—*BALAI CHAND SEAL v. K. M. CHAKRAVARTI AND OTHERS* [1966] 17 S.T.C. 300 (Cal.), see page 105 *supra*.

"Gold or silver bullion"—Meaning of.—The expression "gold or silver bullion" in section 6 of the Hyderabad General Sales Tax Act, 1950, connotes only pure gold or silver and it does not take in gold or silver mixed with copper or lead. Every word used in a statute is presumed to serve a specific purpose and is not a mere redundancy.—*SRI AKHRAJ PARAKH v. THE STATE OF ANDHRA PRADESH* [1960] 11 S.T.C. 483 (A.P.).

"Bullion"—Meaning of.—Where the petitioners bought mint gold from the Bombay mint, added to every eleven parts of that gold one part of copper, made it into a compound and then sold that compound as sovereign gold: *Held*, that what the petitioners sold was "bullion" within the meaning of entry 74 of Schedule II to the Mysore Sales Tax Act, 1957. The expression "bullion" in entry 74 cannot be given and does not possess any scientific meaning and the only meaning which can be given to it is either the meaning which is ordinarily given to it or the technical meaning which is given to it by traders. Whether the expression "bullion" is given the popular meaning or the meaning given to it in trade, that expression means not only pure gold or silver but also an alloy of gold or silver with such small percentage of some other metal as does not take away from it, the character of bullion. *Sri Akhraj Parakh v. The State of Andhra Pradesh* [1960] (11 S.T.C. 483) dissented from. *Ramavatar Budhai Prasad v. The Assistant Sales Tax Officer, Akola, and Another* [1961] (12 S.T.C. 286) referred to.—*CANARA JEWELLERS AND OTHERS v. COMMERCIAL TAX OFFICER, SOUTH KANARA* [1962] 13 S.T.C. 668 (Mys.).

—The word "bullion" used in item 15 of Schedule I to the Madras General Sales Tax Act, 1959, includes all kinds of gold alloy of different grades of fineness suitable for the making of gold jewellery. Where the petitioners purchased *sokka thangam*, mixed it with a small percentage of copper to make it "sovereign" gold and sold it to their customers for the purpose of making jewellery: *Held*, that what the petitioners sold was "bullion" within the meaning of item 15 of Schedule I. *Sri Akhraj Parakh v. The State of Andhra Pradesh* [1960] (11 S.T.C. 483) dissented from. *Canara Jewellers and Others v. Commercial Tax Officer, South Kanara* [1962] (13 S.T.C. 668) followed.—*P. A. R. VISWANATHAN AND COMPANY v. THE STATE OF MADRAS* [1963] 14 S.T.C. 702 (Mad.).

Dealer in silver—*Finished article given to purchaser in exchange for silver and making charges*—*Whether sale.*—See *JAYARAMA CHETTIAR, In re* [1948] 1 S.T.C. 168 (Mad.).

Dealer in gold and silver and jeweller—*Supply of silver to manufacturers and getting finished articles*—*Whether sale.*—*P. A. RAJU CHETTIAR AND BROTHERS v. THE STATE OF MADRAS* [1955] 6 S.T.C. 131 (Mad.).

Dealer in bullion and ornaments—*Giving of bullion and making charges to goldsmith in exchange of ready-made ornaments*—*Whether sale.*—*SALES*

TAX COMMISSIONER, U.P. v. RAM KUMAR AGARWAL [1967] 19 S.T.C. 400 (All.).

Merchants making gold ornaments—*Ornaments made not by paid employees but by independent artisans who were given raw materials and labour charges by merchants*—*Whether merchants manufacturers and entitled to exemption under Notification No. 8728 C.T.—66/49 dated 1st July, 1949, item 33 (Exemption of sale of gold ornaments when sold by manufacturer who charged separately for value of gold and cost of manufacture).*—*J. SRIRANGAM BROTHERS v. SALES TAX OFFICER, GANJAM CIRCLE, BERHAM-PUR* [1959] 10 S.T.C. 257 (Ori.).

—*Exemption—Gold ornaments—Manufacture, manufactory—Meanings of—Making of gold ornaments by artisans engaged by dealer in his workshop*—*Whether artisans formed a manufactory—Orissa Sales Tax Validation Act (7 of 1961).*—*JAMULA SRIRANGAM BROS. v. SALES TAX OFFICER, GANJAM, CIRCLE I* [1966] 17 S.T.C. 69 (Ori.).

Dealer in bullion—*Application for grant of licence retrospectively—Granting of licence for year in which application is made and refusal for other years—Legality—Assessment to sales tax for other years.*—*C. D. GOVINDA RAO v. FIRST MEMBER, BOARD OF REVENUE, AND ANOTHER* [1954] 5 S.T.C. 121 (Trav.-Co.).

Dealer in bullion—*Exemption certificate—Annual fee—Second application for exemption for 1949-50 made after expiry of 30 days from commencement of year—Exemption certificate—When should take effect.*—*GIRDHARI LAL v. SALES TAX OFFICER, ALLAHABAD* [1952] 3 S.T.C. 1 (All.).

Quantity of bullion sold exceeding quantity purchased from dealers—*Claim for exemption of entire turnover.*—The assessee, a dealer in bullion and jewellery, sold bullion purchased both from dealers and persons other than dealers. The total sales turnover of bullion came to Rs. 5,63,000 out of which the assessee claimed that a turnover of Rs. 3,80,918, representing sales of bullion purchased from dealers, was exempt from tax as second sales inasmuch as a presumption should be raised in his favour that the entire quantity covered by second sales was included in the sales turnover of Rs. 5,63,000. The assessee was not maintaining a separate account of the gold sold from out of the stocks obtained from dealers or licensees. The department and the Tribunal rejected the assessee's claim: *Held*, that although the assessee had not maintained a separate account, such an account would be only a make-believe one. What the law required was that there should be no escape of tax. As the quantity of bullion sold by the assessee exceeded the

quantity purchased from other dealers, the natural presumption arose that a person engaged in a transaction would presumably follow that course which took him out of the taxable category rather than otherwise. Therefore the turnover of Rs. 3,80,918 should, under the law, be deemed to relate to the quantity of gold which the assessee had purchased from other dealers and it was exempt from tax as turnover representing second sales of bullion.—*S. RATHINASWAMY CHETTIAR v. THE STATE OF MADRAS* [1962] 13 S.T.C. 419 (Mad.).

—In view of sections 10 and 40 of the Madras General Sales Tax Act, 1959, and rule 26(1), (2) and (9) of the Madras General Sales Tax Rules, 1959, the decision of the Madras High Court in *S. Rathinaswamy Chettiar v. The State of Madras* [1962] (13 S.T.C. 419) which was given under the Madras General Sales Tax Act, 1939, requires to be reconsidered.—*THE STATE OF MADRAS v. V. P. S. A. NARAYANA NADAR & Co.* [1968] 21 S.T.C. 25 (S.C.).

Sales of bullion when exempt from sales tax.—See *SHAH MANEKCHAND KUNDANMAL & Co. v. STATE OF BOMBAY* [1960] 11 S.T.C. (T.D.) 50 under EXEMPTION.

BURDEN OF PROOF

Assessment under section 12(2), Orissa Sales Tax Act.—An assessment under section 12(1) of the Act is completed when the assessing officer merely accepts the return filed without calling for further evidence. Only then he is competent to accept the return as final. But once he has proceeded under section 12(2) to call for the accounts, a burden is thrown on the assessing officer to make the assessment on the basis of the evidence produced.—*A. K. JOSHI AND COMPANY, In re* [1955] 6 S.T.C. 70.

Commission agent.—Section 8 of the Madras General Sales Tax Act, 1939, clearly lays the burden on the persons, who claim to be commission agents and not dealers to prove that they are commission agents and not dealers. If they fail to prove according to the requirements of section 8 that they are commission agents there is nothing preventing them from being held liable to tax as mere dealers.—*M. VELU KONAR AND OTHERS, In re* [1951] 2 S.T.C. 127 (Mad.).

Contract of sale.—The terms of a contract of sale are within the special knowledge of the assessee and they must be placed before the taxing authorities.—*GREAT INDIA RICE AND OIL MILLS v. STATE OF BIHAR* [1957] 8 S.T.C. 341 (Pat.).

Carrying on business.—The onus of proving that an assessee is carrying on business and is therefore a “dealer” within the meaning of section 2(b) of the Central Sales Tax Act, 1956, is on the department.—*DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX, QUILON v. TRAVANCORE RUBBER AND TEA Co.* [1967] 20 S.T.C. 520 (S.C.) and *DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX, QUILON v. MIDLAND RUBBER AND PRODUCE Co. LTD.* [1968] 22 S.T.C. Short Notes 2 (S.C.).

Correctness of return.—When the taxing officer has reason to doubt the genuineness of the accounts and the correctness of the returns the burden is on the assessee to satisfy him in this matter. For this purpose the assessee can call in aid the records mentioned in rule 11 of the Madras General Sales Tax Rules, 1939.—*MADUGULA PAPPAYYA AND OTHERS v. PROVINCE OF MADRAS* [1956] 7 S.T.C. 180 (Andh.).

Discriminatory legislation.—There is a strong presumption in favour of the validity of legislative classification and it is for those who challenge it as unconstitutional to allege and prove beyond all doubt that the legislation arbitrarily discriminates between different persons similarly circumstanced.—*V. M. SYED MOHAMMAD AND COMPANY AND ANOTHER v. THE STATE OF ANDHRA AND OTHERS* [1954] 5 S.T.C. 108 (S.C.).

—There is a strong presumption in favour of the validity of legislative classification and it is for those who challenge it as arbitrary and unconstitutional to establish it beyond doubt.—*GORANTLA BUTCHAIHA CHOWDARY AND OTHERS v. THE STATE OF ANDHRA (NOW ANDHRA PRADESH)* [1958] 9 S.T.C. 104 (A.P.).

—“The initial presumption, of course, is in favour of the validity of the statutory provision in question. In *Metropolitan Casualty Insurance Co. v. Brownell* (79 L. Ed. 1070), STONE, J., pointed out: ‘It is a salutary principle of judicial decision, long emphasised and followed by this Court, that the burden of establishing the unconstitutionality of a statute rests on him who assails it, and that courts may not declare a legislative discrimination invalid unless, viewed in the light of facts made known or generally assumed, it is of such a character as to preclude the assumption that the classification rests upon some rational basis within the knowledge and experience of the legislators. A statutory discrimination will not be set aside as the denial of equal protection of the laws if any state of facts reasonably may be conceived to justify it.’ In our opinion, those principles could well apply in testing the validity of any of

the Acts in this country. Even though the Legislature of the Province of Madras could not have been conscious of the limitation subsequently imposed by Article 14 of the Constitution when the Legislature enacted the impugned provision in 1949, if the Courts can reasonably conceive of any state of facts, which now exists, when the validity of the statutory provision is challenged, to justify the classification on which the legislative discrimination could be based, it is the duty of the Court to uphold the validity of the legislative provision."—*A. R. KRISHNA IYER AND ANOTHER v. THE STATE OF MADRAS* [1956] 7 S.T.C. 346 (Mad.).

—It is for the person who assails a legislation as discriminatory to establish that it is not based on a valid classification and this burden is all the heavier when the legislation under attack, is a taxing statute.—*EAST INDIA TOBACCO CO. v. STATE OF ANDHRA PRADESH* [1962] 13 S.T.C. 529 (S.C.).

Exemption.—The burden is always on the dealer, on whom the liability of payment of tax primarily rests, to prove that a particular transaction is exempt by reason of payment through an agent or otherwise.—*THE STATE OF MYSORE v. A. C. HANUMANTHAPPA* [1955] 6 S.T.C. 34 (Mys.).

—See also EXEMPTIONS.

Export.—Where an assessee claims that certain goods were exported, it is for him to prove that so much out of such and such sales were exported.—*FIRM MATADIN VISHWANATH v. V. P. GOVERNMENT AND ANOTHER* [1951] 2 S.T.C. 16, at p. 18.

Mode of proof for claiming exclusion.—No objection can reasonably be raised if the taxing authority insists on certain modes of proof being adduced before a claim to exclusion can be allowed.—*THE STATE OF BOMBAY AND ANOTHER v. THE UNITED MOTORS (INDIA) LTD. AND OTHERS* [1953] 4 S.T.C. 133 (S.C.).

Notice—Service of notice by registered post—Presumption.—See NOTICE.

Offences—Whether accused guilty—Burden of proof.—See OFFENCES.

Penalty—Essential ingredients for imposing penalty—Burden of proof—Findings in assessment proceedings—Admissibility in penalty proceedings—Whether operate as *res judicata*—Right of assessee to adduce evidence.—A penalty under section 43(1) of the Madhya Pradesh General Sales Tax Act, 1958, can be imposed on an assessee only if the authority mentioned in the provision is satisfied that the assessee had deliberately concealed his turnover

or furnished a false return, and only after giving the assessee a reasonable opportunity of being heard. The proceedings under section 43(1) being in their very nature penal proceedings, the burden of proving the essential ingredients for imposition of the penalty is not on the assessee but on the department. The assessment proceedings and penalty proceedings are different in their nature. The findings given in assessment proceedings are relevant and admissible in penalty proceedings; but they do not operate as *res judicata*. Therefore the conclusion of the assessing authority in assessment proceedings that the return filed by the assessee is false or that he has concealed his turnover cannot be made the sole basis of an order of penalty. In rebuttal of the evidence led by the department the assessee is entitled to adduce evidence to show that no penalty can be imposed on him. Where an order imposing penalty is so manifestly arbitrary and capricious, an assessee could not be denied the relief of the issue of a writ of *certiorari* for quashing that order merely because under section 38 of the Act the assessee could have appealed against that order. *Dwarka Prasad Sheokaran Das v. Commissioner of Income-tax, U.P.* [1953] (24 I.T.R. 410), *Commissioner of Income-tax, Burma v. A. A. R. Chettiar Firm* [1933] (1 I.T.R. 285) and *Commissioner of Income-tax v. Gokuldas Harivallabhdas* [1958] (34 I.T.R. 98) relied on.—*S. R. KALANI & Co. v. C. L. SHARMA AND ANOTHER* [1965] 16 S.T.C. 756 (M.P.).

Reassessment—Turnover escaping assessment—Burden of proof that turnover has escaped.—See COMMISSIONER OF SALES TAX, MADHYA PRADESH, *INDORE v. KUNTE BROS.* [1962] 13 S.T.C. 366 (M.P.).

Registration.—So long as the list of registered dealers is not published, it is not quite correct to place the onus of proof of registration on the assessee as it is not within their power to produce the registration certificates of other dealers.—*RAMDHARI RAM CHANDER, In re* [1955] 6 S.T.C. 430.

Sale—Whether there is sale.—Since there can be no liability to pay sales tax without an actual sale, the burden is upon the department to establish that there is an actual sale.—*Haji P. K. MOIDOO BROS. v. THE STATE OF MADRAS* [1959] 10 S.T.C. 1 (Full Bench) (Ker.).

—Under the Mysore Sales Tax Act, 1957, there is no presumption that all the transactions put through by a "dealer" are exigible to tax. It is for the revenue to establish that any particular transaction is exigible to tax. Before the proviso to section 5(7) can come into operation, it must

first be shown that the transactions are either "sales" or "purchases". Only if that fact is established, the burden shifts on to the assessee to prove that the "sales" or purchases are exempt from taxation. *P. K. Moidoo Bros. v. The State of Madras* [1959] (10 S.T.C. 1) relied on.—*MUTHUVALLI L. HAJEE AHAMED HUSSAIN SAHIB & CO. v. STATE OF MYSORE* [1964] 15 S.T.C. 57 (Mys.).

—In all cases of taxation, the burden of proving the necessary ingredients laid down by law to justify taxation is upon the taxing authority.—*GIRDHARILAL JIWANLAL v. THE ASSISTANT COMMISSIONER OF SALES TAX (APPEALS), NAGPUR* [1957] 8 S.T.C. 732 (Bom.).

Sale outside State—Exemption under Article 286 (1) (a)—Delivery and consumption have to be proved as facts.—See CONSTITUTION OF INDIA.

—Facts entitling an assessee to invoke the aid of the Explanation to Article 286 (1) (a) of the Constitution must be established by him.—*SRI RAMAKRISHNA COMMERCIAL SOCIETY LTD. v. THE STATE OF ANDHRA* [1961] 12 S.T.C. 31 (A.P.).

Sale—Place of sale.—If the respondents wanted to establish that the sales did not take place within F and that not only the contracts of sale were entered into outside F but that as a matter of fact the property in the goods had passed to the buyer outside F, then the onus lay on them to prove it.—*THE PUBLIC PROSECUTOR v. E. P. VARKEY AND OTHERS* [1955] 6 S.T.C. 243 (Mad.).

Sales to persons holding certificate of registration—Deduction under section 5(2)(A)(a)(ii), Orissa Act—Burden of proof—Presumption—Right of department to adduce evidence that certificate holder is not registered dealer—Rule of estoppel—Applicability.—If an assessee wants to claim a deduction under section 5(2)(A)(a)(ii) of the Orissa Sales Tax Act, 1947, the burden of proving the deduction initially lies on him and he can be said to have discharged that burden by showing that he sold the goods to a person holding a certificate of registration issued by the department. The law does not cast on the assessee any responsibility to be satisfied about the correctness of the certificate of registration, because it would *prima facie* be a strong piece of evidence in his favour. But if he does not make any further enquiries and remains content with the mere production of the certificate, he runs the risk of losing his claim for deduction if the department succeeds in showing that the purchasing dealer was not, in law, a registered dealer. It would be open to the department to lead evidence to show that the holder of the certificate of registration was not registered under the provisions of the Act and

was not a registered dealer in the eye of law. The declaration which states that the purchasing dealer is a registered dealer may be correct so far as the statement of fact is concerned, but it may not be correct so far as the question of law as to whether the purchasing dealer was *validly* registered is concerned. Hence the mere production of a declaration though a strong presumptive evidence in support of the claim for deduction, will not be conclusive and it will be open to the department to rebut that presumption. The Sales Tax Authorities have no jurisdiction to grant certificates of registration to fictitious persons or persons who do not "carry on" business. Any such mistake committed by the officers of the department either due to negligence or due to collusion cannot, on general principles, operate as estoppel against the State. A rule of estoppel may arise on a statement of fact on the basis of which a person took some action or omitted to take action and therefore the State may not be permitted to say that the purchasing dealer in fact did not get himself registered. But the question as to whether such registration is valid or not is a pure question of law and the rule of estoppel will not apply. *Santumal v. Assistant Commissioner of Sales Tax (Appeals), Eastern Division, Ranges I & II, Nagpur and Another* [1963] (14 S.T.C. 287) dissented from.—*NOWRANGAL AGARWALA v. STATE OF ORISSA* [1965] 16 S.T.C. 271 (Ori.).

Single point tax—Tax on first sale—Burden of proof—Dealer in radios claiming that his sales are second sales—Nature of proof required to claim exemption—Scope of section 10, Madras 1959 Act.—Under the charging provision in the Madras General Sales Tax Act, whether under the 1939 Act or under the 1959 Act, the turnover of sales of goods as defined in the respective enactments is liable to sales tax and the benefit of assessability only at a single point and non-assessability at other points is really in the nature of an exemption and the burden of proving this exemption is laid on the dealer. In almost all cases, the question whether a sale is a first sale or a second sale will be primarily a question of fact. This will be entirely within the special knowledge of the dealer, and it is for him, who is in possession of the material facts to supply them. Such an obligation of discharging the burden of proof can be deduced from section 106 of the Indian Evidence Act, apart from section 10 of the Sales Tax Act. What section 10 lays down is, therefore, the same broad principle enunciated in section 106 of the Evidence Act, that the onus is on the person who is in possession of special facts exclusively within his knowledge, to disclose them to the Court, when he seeks to obtain any benefit

for himself on the basis of proof of those facts. Section 10 in the 1959 Act only consolidates the provisions in the 1939 Act about the burden of proof found both in section 3(2), second proviso, and also in section 5-B. The assessee was a dealer in radios which were assessable at the point of first sale in the State. The assessee claimed that a particular item in the turnover represented sales of second-hand radio sets which the assessee had purchased in exchange for new radio sets sold by him to customers and that therefore they should not be assessed in his hands as first sales in the State: *Held*, that the assessee should have obtained from the persons, who sold the radios to him, the particulars of the prior purchase, whether they were purchased from other dealers in Madras State or outside the Madras State. In the case of the latter, the turnover in the hands of the assessee, even though it related to second-hand radios sold, would be first sales in the State. Even assuming that the particular customer was not able to preserve the original purchase bill, the assessee should have obtained an affidavit or a declaration from him, then and there, regarding the anterior history of the radios. As these essential particulars were not furnished by the assessee, the levy of tax on him as first seller was proper.—*B. V. BHATTA v. THE STATE OF MADRAS* [1965] 16 S.T.C. 441 (Mad.).

Single point tax—*Goods taxable only on first sale—Claim for exemption of certain sales as second sales—Presumption—Burden of proof—Whether separate accounts should be maintained.*—In view of sections 10 and 40 of the Madras General Sales Tax Act, 1959, and rule 26(1), (2) and (9) of the Madras General Sales Tax Rules, 1959, the decision of the Madras High Court in *S. Rathinaswamy Chettiar v. The State of Madras* [1962] (13 S.T.C. 419), which was given under the Madras General Sales Tax Act, 1939, requires to be reconsidered.—*THE STATE OF MADRAS v. V. P. S. A. NARAYANA NADAR & Co.* [1968] 21 S.T.C. 25 (S.C.).

Terms of sale—Burden of proof.—In sales tax proceedings when once the assessing authorities prove a sale or when once the sale is admitted by the assessee himself, or when the sale is otherwise established, the exact terms of the sale must be disclosed by the assessee himself, as they are matters within the personal knowledge of the assessee rather than that of any other person, *i.e.*, the burden of proof on questions of law would be on the assessing authorities but on questions of fact the burden inevitably is on the assessee. Under section 114, illustration (g), of the Evidence Act, the Court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.

The Board however refrained from enforcing the above principles on the ground that the assessment in the case related to the first quarter after the coming into force of the Act, when neither the assessee nor the Assessing Officer could have been clear enough in their minds about the procedures and methods to be employed, nor could they have been fully aware of all the legal implications of several of the issues involved.—*MOHANLAL RAMKISAN NATHANI v. THE STATE* [1952] 3 S.T.C. 305.

Transfer of business.—The question whether the ownership of the business of a dealer was entirely transferred is a question of fact, and section 33(1) of the Madhya Pradesh General Sales Tax Act, 1958, makes it incumbent on the Revenue to establish beyond doubt the conditions necessary for bringing into play that provision. It is for the department to prove that the ownership of the business had been transferred to the petitioner and not for the applicant to tender evidence for proving the negative that he was not the transferee of the business.—*BAJRANGLAL BAJAJ v. THE STATE OF MADHYA PRADESH AND OTHERS* [1965] 16 S.T.C. 350 (M.P.).

[See also *FARIDABAD INDUSTRIAL AND QUARRYING COMPANY v. THE EXCISE AND TAXATION OFFICER (ASSESSING AUTHORITY) AND ANOTHER* [1966] 18 S.T.C. 101 (Punj.).]

BUSINESS

“Business” in the Sales Tax Acts, meaning of.—See **DEALER**.

CASH

(See **SALES TAX AUTHORITIES**)

CASH BILLS

(See also **ACCOUNT BOOKS**)

Commission agent—*Sale of flowers, fruits and vegetables—Licence—Failure to observe condition regarding maintenance of stock book and issue of cash bills—Whether violates conditions of licence—Right to exemption—Failure to observe condition impossible of performance—Effect—Madras General Sales Tax Act (IX of 1939), Sec. 8.*—*THE STATE OF MADRAS v. P. G. GOVINDASWAMY AND Co. AND OTHERS* [1954] 5 S.T.C. 103 (Mad.).

Failure to issue bill—*Levy of composition fee—Legality—Whether section 27, Mysore Sales Tax Act, 1957, contravenes Article 14, Constitution of India.*—The contravention of section 27(1) of the Mysore Sales Tax Act, 1957, may also consist in failure to issue a bill where a bill should have been issued, and the amount of the bill which is the basis for calculation of the fine

under section 27(2) could reasonably be regarded as the amount which should or could have been properly entered in the bill if issued. Therefore the levy of a composition fee under section 31 is possible for the omission to issue a bill or cash memorandum as required by section 27(1). The Legislature cannot be said to have contravened Article 14 of the Constitution by taking into account, in enacting section 27, that the necessity for issuing bills is greater and more desirable in the case of persons with a larger turnover than in the case of persons with a smaller turnover.—K. N. KRISHNASWAMY *v.* COMMERCIAL TAX OFFICER, CHIKMAGALUR, AND ANOTHER [1967] 20 S.T.C. 239 (Mys.).

CASHEW

Cashew kernel, whether liable to sales tax.—The word “cashew” in rule 4(2) (c) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, includes “cashew kernel” as well and therefore “cashew kernel” is liable to sales tax under the Madras General Sales Tax Act, 1939.—SWASTI CASHEW INDUSTRIES PRIVATE LTD. *v.* THE STATE OF KERALA [1961] 12 S.T.C. 691 (Ker.).

C. P. AND BERAR SALES TAX ACT

Central Provinces and Berar Sales Tax Act, 1947, Sec. 2(g) and Expl. II, whether *ultra vires*.—The assessee-firm was a dealer in bidis, having its head office in Mathura in U.P. and branch office in Sagar in M.P., where bidis were manufactured. The branch office was a dealer registered under the Central Provinces and Berar Sales Tax Act, 1947. The head office received and accepted orders from customers outside the Province and instructed the branch office to consign goods, as per orders received, to the customers' stations, but all addressed to self. The branch office carried out instructions and sent bills prepared at cost price along with the relative railway receipts to the head office which prepared bills for payment to customers as per terms agreed upon and sent the bills along with the railway receipts to customers through a bank or by V.P.P. The Sales Tax Commissioner did not deduct the sum of Rs. 82,115 representing the turnover in respect of these transactions from the assessee's taxable turnover on the ground that though the contract of sale was made outside the Province and the actual transfer of property in the goods also took place outside the Province, as the goods were in the Province at the time the contract of sale was made, the sale should be deemed to have taken place in the Province under Explanation II to section 2(g). The assessee contended that the

Act provided for a levy of tax only on the sale of goods in the Central Provinces and Berar and that as the transfer of property in the goods took place outside the Province the sales were not liable to taxation under the Act. The assessee further contended that the interpretation put upon Explanation II by the Sales Tax Commissioner was not correct, that the tax levied on the strength of Explanation II was in the nature of excise duty and not sales tax, and that Explanation II was extra-territorial in operation and was therefore *ultra vires* the Provincial Legislature: *Held*, (1) that the plain meaning of the Explanation is that a sale which may not have taken place in the Province is deemed to have taken place in the Province, provided the goods which are the subject-matter of the sale are actually in the Province when the contract of sale concerning them is made even if the said contract of sale is made outside the Province; (2) that the Central Provinces and Berar Sales Tax Act, 1947, contains machinery which enables an assessee effectively to raise the question whether or not a particular provision of the Act bearing on the assessment made upon him is *ultra vires*. Section 21 of the Act is analogous to section 67 of the Indian Income-tax Act, 1922, in barring the jurisdiction of civil courts. Therefore the Board of Revenue could entertain the question whether Explanation II to section 2(g) of the Central Provinces and Berar Sales Tax Act, 1947, was *ultra vires* the Provincial Legislature; (3) that Explanation II to section 2(g) was not *ultra vires* the Provincial Legislature. Although there is an element of extra-territoriality in it, in introducing that element, the Provincial Legislature did not exceed its jurisdiction in enacting the taxing statute. The tax imposed by the Act is a tax on sales within the meaning of item 48 of List II of the Seventh Schedule of the Government of India Act, 1935, and not an excise duty; (4) that the Sales Tax Commissioner was therefore right in including the sum of Rs. 82,115 in the assessee's taxable turnover.—GOVINDRAM LAXMAN PRASAD *v.* THE STATE OF MADHYA PRADESH [1951] 2 S.T.C. 176.

—The rules enacted in the Sale of Goods Act could be changed either at the instance of the Central or the Provincial Legislature provided the latter had obtained the sanction of the Governor-General as required by sections 100 and 107 of the Government of India Act, 1935. Explanation II to section 2(g) of the Central Provinces and Berar Sales Tax Act, 1947, before and after its amendment by Act XVI of 1949, has made drastic changes in the rules relating to sale of goods as found in the Sale of Goods Act; but as sanction of the Governor-General was

in fact obtained for the unamended Explanation it was not *ultra vires* the Provincial Legislature. The Explanation also cannot be challenged on the ground of extra-territoriality because the entry in the Legislative List gives the most extensive powers conceivable for purposes of taxation, including the power to create a fiction by which, if a substantial portion of the entire contract of sale of goods takes place in this Province, the rest of the transaction can be brought in. The amended Explanation however was *ultra vires* the Provincial Legislature because sanction of the Governor-General was not obtained for it. Further the amended Explanation imposed tax on goods produced in the Province and not appropriated towards the contract already existing and that would amount to levying an excise duty from the manufacturer. The effect of holding the amended Explanation *ultra vires* the State Legislature would be to rehabilitate the Explanation as it existed before the amendment. The scheme under which sales tax is collected under the Sales Tax Act conflicts with the provisions of Article 286(1) and therefore to that extent Article 286(1) must prevail and as from the date of the Constitution the collection of sales tax must be within the State where the goods are delivered. The proviso after Article 286(2) and the President's Sales Tax Continuance Order, 1950, save the existing laws from the operation of the "commerce clause" only [Article 286(2)] and not from the operation of Article 286(1) which determines the venue for the imposition of sales tax in India. Where a dealer merely sends his goods to his shop in another Province there being no contract of sale in furtherance of which the goods are despatched, the transportation is merely for business purposes, unconnected with any sale such as is contemplated in entry No. 48 in List II of Schedule VII of the Government of India Act, 1935. The State Government cannot impose a transportation or export duty and, therefore, there can be no question of a sales tax in such circumstances. The mere sending of the goods to a person outside the State would not *per se* constitute a sale, but where there is already a dealer registered in this State who transports the goods to an extra-State point in furtherance of a contract of sale, though not entered into by the dealer but by the head office situated at an extra-State point, the transaction may for the purposes of the sales tax be regarded as one in the State, on the strength of the unamended Explanation. The sending of goods to customers outside the State to whom the railway receipts are sent through a bank constitutes a sale within the meaning of the Act.

The sending of goods to salesmen outside the Province amounts to a sale within the meaning of the Act, if there is already a contract of sale entered into in respect of the goods which the registered dealer supplies from this State. It would not be so if the sellers merely are stockists, who have not purchased the goods but to whom the goods have been sent for dealing by them as they think best. In other words, if the goods are merely exported but not sent in furtherance of a contract, then tax cannot be levied. But if the goods are sent on a *Bijah* to salesmen outside the State, then tax can be validly levied on the registered dealer on the assumption that the whole of the transaction must be deemed to have taken place in the State. —SHRIRAM GULABDAS v. BOARD OF REVENUE, MADHYA PRADESH, AND ANOTHER [1952] 3 S.T.C. 343.

—The petitioner filed a petition under Article 226 of the Constitution of India for a writ of prohibition against the Sales Tax Authorities to restrain them from enforcing against him the provisions of the C. P. and Berar Sales Tax Act, 1947, and in particular, the explanations to the definition of sale contained in section 2(g) together with the amended explanations introduced by the C. P. and Berar Act No. XVI of 1949. The petitioner had not filed any return for the relevant quarter: *Held*, that the petition could not succeed because a writ of prohibition could not be issued in such circumstances. The Explanation II to section 2(g) as amended by Act XVI of 1949 was *ultra vires* the Legislature. Mere production of goods would not be enough to make the tax payable unless the goods are appropriated to a particular contract. To impose the tax at that stage would tantamount to charging an excise duty and not a tax on the sale of goods. *Shriram Gulabdas v. Board of Revenue, Madhya Pradesh* [1952] (3 S.T.C. 343) followed. *Raleigh Investment Co. Ltd. v. Governor-General in Council* [1947] (15 I.T.R. 332; A.I.R. 1947 P.C. 78) referred to. —HIMMATLAL HARILAL MEHTA v. THE STATE OF MADHYA PRADESH AND OTHERS [1952] 3 S.T.C. 448. On appeal to Supreme Court see next para.

—Article 286(1)(a) of the Constitution of India read with the Explanation thereto and construed in the light of Article 301 and Article 304 prohibits taxation of sales or purchases involving inter-State elements by all States except the State in which the goods are delivered for the purpose of consumption therein. Consequently Explanation II to section 2(g) of the Central Provinces and Berar Sales Tax Act, 1947, as

amended by Act XVI of 1949 is *ultra vires* the State Legislature. The principle that a Court will not issue a prerogative writ when an adequate alternative remedy is available to the aggrieved party cannot apply where the party comes to the Court with an allegation that his fundamental right has been infringed and sought relief under Article 226. The High Court declared that Explanation II to section 2(g) was *ultra vires* the State Legislature but declined to issue a writ and dismissed the petition made to it under Article 226 on the ground that a *mandamus* issues only to compel an authority to do or abstain from doing some act, that it is seldom anticipatory and certainly never issues where the action of the authority is dependent on some action of the petitioner and that in the present case the petitioner had not even made his return and no demand for the tax could be made from him. The State however evinced an intention that it could proceed to apply the penal provisions of the Act against the petitioner if he failed to make the return or to meet the demand: *Held*, that there was a sufficient infringement of the petitioner's fundamental rights under Article 19(1)(g) of the Constitution and he was therefore entitled to relief under Article 226. The remedy provided under the Sales Tax Act can hardly be described as an adequate alternative remedy. Decision of the Nagpur High Court in *Himmatlal Harilal Mehta v. State of Madhya Pradesh and Others* [1952] (3 S.T.C. 448) *reversed*.—*HIMMATLAL HARILAL MEHTA v. THE STATE OF MADHYA PRADESH AND OTHERS* [1954] 5 S.T.C. 115 (S.C.).

—Although Explanation II to section 2(g) of the C.P. and Berar Sales Tax Act, 1947, was *ultra vires* the Legislature on the ground that assent of the Governor-General was not obtained for its enactment, it could not be said that the rest of the Amendment Act XVI of 1949 was also invalid. The remaining portion of the Amendment Act did not require the assent of the Governor-General and the Explanation was severable from the rest of the Act. Consequently the Amendment Act XVI of 1949 in so far as it amended the Second Schedule by deleting from it item No. 36 was validly enacted and was effective. Although the power to amend the Schedule was delegated to the State Government under section 6, that delegation does not rob the Legislature of its plenary power to amend the Acts as and when occasion arises. It is not necessary that the delegation should be withdrawn before the Legislature itself can amend the Act. Further, the conditions created for the exercise of the power by the delegate do not bind the Legislature. The Legislature can at any time

amend the whole Act including the Schedule. Taxing measures imposing sales tax on selected commodities and not on others cannot be regarded as discriminating between one dealer and another. There is no discrimination in taxing betel leaves when vegetables are exempted. *MADHYA PRADESH PAN MERCHANTS ASSOCIATION, SANTRA MARKET, NAGPUR v. STATE OF MADHYA PRADESH (SALES TAX DEPARTMENT) AND OTHERS* [1956] 7 S.T.C. 99.

Provisions imposing tax on supply of building materials in building contracts—Validity.—See BUILDING CONTRACTS.

Rule 20A—Whether *ultra vires* State Government.—It was not within the competence of the State Government under its rule-making powers to alter the incidence of the tax from the seller to the purchaser. Consequently rule 20A of the Central Provinces and Berar Sales Tax Rules, 1947, was *ultra vires* the State Government. Even if it could be said that it was open to the Legislature to make the tax recoverable from the purchaser as a penalty for evasion and breach of the declaration made by him, it was necessary to enact the law in the Act and not in the rules.—*BABULAL v. D. P. DUBE AND OTHERS* [1955] 6 S.T.C. 255.

C. P. and Berar Sales Tax Act (21 of 1947)—Arrears of tax—Recovery—Necessity to determine liability of person and to give opportunity of hearing before recovery proceedings are started—*Madhya Pradesh General Sales Tax Act, 1958, Secs. 23, 33.*—*MANGALCHAND AND OTHERS v. SALES TAX OFFICER, NARSINGHPUR, AND ANOTHER* [1966] 17 S.T.C. 226.

—Contract of sale—Price includes sales tax—Seller and purchaser in Madhya Pradesh—Delivery of goods at Bombay—Sales tax collected by seller paid to Government—Subsequent decision of Supreme Court that such levy is illegal—Suit for refund of tax—Maintainability—Effect of Sales Tax Laws Validation Ordinance, 1956—*Indian Contract Act, 1872, Sec. 20.*—*GADRE MOTORS v. RADHAKRISHNA* [1956] 7 S.T.C. 809.

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—Sec. 11-A—Reassessment—Conditions for applicability of section 11-A—"Information which has come into his possession", meaning of—When officer can proceed to assess under the section—Whether assessee should be informed of the information—Satisfaction of the officer—Jurisdiction of Court to go into question—Whether section 11-A, Sales Tax Act, and section 34, Income-tax Act, analogous.—*KANHAIYALAL BAHADURSINGH v. COMMISSIONER OF SALES TAX, MADHYA PRADESH, INDORE, AND ANOTHER* [1962] 13 S.T.C. 615.

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—Sec. 11-B—Pleader—Appearance before Sales Tax Authorities—Retired Government servant enrolling as Pleader of High Court—Right to appear before Sales Tax Authorities—Government memorandum prohibiting retired officers from conducting sales tax cases for a period of two years from retirement—Validity.—*SUNDERLAL v. THE STATE OF MADHYA PRADESH* [1956] 7 S.T.C. 554.

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—Sec. 15—See under Secs. 2(c) and 10.

—Secs. 15(1), 22(5), (7)—Account books—Assessment by Assistant Commissioner—Withdrawal of appeal to Commissioner—Order of Commissioner without giving hearing to assessee directing Assistant Commissioner to re-examine assessment—Whether administrative or judicial order—Notice issued by Assistant Commissioner for inspection of accounts—Legality.—*VRAJLAL MANILAL AND CO. v. COMMISSIONER OF SALES TAX, MADHYA PRADESH* [1952] 3 S.T.C. 333.

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—Sec. 19—See also Sec. 10.

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—Sec. 22—Appeal—Non-payment of tax—Summary rejection by second appellate authority—Whether order of first appellate authority merged in the order of second appellate authority—Competency of revision.—*JANATA OIL INDUSTRIES, NAGPUR v. DEPUTY COMMISSIONER OF SALES TAX, EASTERN DIVISION, NAGPUR, AND ANOTHER* [1967] 19 S.T.C. 97.

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—Sec. 22-B—Board of Revenue—Appellate powers—Appeal under section 22-B(3) against order of Commissioner under section 22-B(1) reopening assessment—Power to stay proceedings arising in pursuance of that order.—THE BURHANPUR TAPTI MILL LTD. *v.* THE BOARD OF REVENUE, MADHYA PRADESH, AND OTHERS [1955] 6 S.T.C. 670.

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—Sch. I, Part I, item 15—Glass bangles—Whether glass-ware.—HAJI JAMALUDDIN MANGUJI *v.* THE STATE [1955] 6 S.T.C. 141.

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—Rule 20A—Sales to registered dealer—User of goods for purposes other than mentioned in declaration—Levy of tax from purchaser—Legality—Rule 20A—Whether *ultra vires* State Government—Contract of dyeing—Whether transfer of property in dye-stuff is involved.—BABULAL *v.* D. P. DUBE AND OTHERS [1955] 6 S.T.C. 255.

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—Rule 25—See [1964] 15 S.T.C. 18.

—Rule 26(2)—See Sec. 2(c).

—Rule 53—See Sec. 2(e).

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CENTRAL SALES TAX ACT, 1956

HISTORY OF THE LEGISLATION

Pursuant to the legislative powers conferred on the Provincial Legislatures under the Government of India Act, 1935, the Provincial Legislatures enacted Sales Tax Acts for their respective Provinces. Although in most of those Acts "sale" was first defined as meaning transfer of the property in the goods, so as to make the passing of the property within the Province the principal basis for the imposition of the tax, yet by means of explanations to the definition, those Acts gave extended meanings to that word and thereby enlarged the scope of their operation. The imposition of tax by the Provinces on sales or purchases of goods on the basis of the slight territorial connection or nexus resulted in multiple taxation of one and the same transaction which discouraged the free flow of

trade within India regarded as one economic unit. The Constitution-makers sought to resolve this problem by restricting the taxing power of the States on sales or purchases involving inter-State elements. While Article 246(3) read with entry 54 in List II of the Seventh Schedule of the Constitution conferred power on the Legislatures of Part A and Part B States to make law with respect to "taxes on the sale or purchase of goods other than newspapers", Article 286 clamped on that legislative power several fetters. "Broadly speaking, the fetters thus placed on the taxing power of the States are that no law of a State shall impose or authorise the imposition of a tax on the sale or purchase of goods where such sale or purchase takes place, (a) outside the State, or (b) in the course of import or export, or (c) except in so far as Parliament otherwise provides, in the course of inter-State trade or commerce, and lastly (d) that no law made by the Legislature of a State imposing or authorising the imposition of a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for the life of the community shall have effect unless it has been reserved for consideration of the President and has received his assent."* The interpretation of Article 286 became a difficult task resulting in the emergence of several conflicting decisions. Accordingly a Taxation Enquiry Commission was appointed to enquire into the problem. The Commission examined the problem with great care and thoroughness and made certain recommendations. The Constitution (Sixth Amendment) Act, 1956, gave effect to the recommendations of the Commission regarding the amendment of the Constitutional provisions relating to sales tax. The most important effect of the Amendment Act is that tax on inter-State sales or purchases has come within the legislative and executive power of the Union. The amendments made by the Amendment Act were as follows:

CONSTITUTION (SIXTH AMENDMENT) ACT, 1956. —Section 2 of the Amendment Act added a new entry 92A in the Union List placing taxes on inter-State sales and purchases within the exclusive legislative and executive power of the Union, and made entry 54 of the State List "subject to the provisions" of this new entry. These taxes were added to the list given in clause (1) of Article 269, so that, although they would be levied and collected in accordance with an Act of Parliament, they would not form part of the Consolidated Fund of India, but would accrue to the States themselves. Article 269 was also amended expressly empowering Parliament

*[1955] 6 S.T.C. 446, at p. 470.

to formulate by law principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce. Section 4 of the Amendment Act deleted the Explanation to clause (1) of Article 286 which gave rise to a great deal of legal controversy and practical difficulty and in the place of clause (2) of Article 286 the Amendment Act inserted a new provision empowering Parliament to formulate principles for determining when a sale or purchase of goods takes place (a) outside a State, or (b) in the course of import or export. Clause (3) of Article 286 was replaced by a new clause under which Parliament has the power to declare by law the goods which are of special importance in inter-State trade or commerce and also to specify the restrictions and conditions to which any State law (whether made before or after the Parliamentary law) will be subject in regard to the system of levy, rates and other incidence of the tax on the sale or purchase of those goods.

CENTRAL SALES TAX ACT, 1956.—The Central Sales Tax Act, 1956, authorised by the Constitution as amended by the Constitution (Sixth Amendment) Act, 1956, was subsequently enacted by Parliament. This Act imposes a tax on inter-State sales and formulates the principles for determining when a sale or purchase of goods takes place outside a State, or in the course of inter-State trade or commerce, or in the course of import of the goods into or export of the goods out of India (sections 3 to 5). As regards import and export the position under the Constitution as interpreted by the Supreme Court in the two *Travancore* cases [1952] (3 S.T.C. 434 and [1953] 4 S.T.C. 205) has been found by Parliament to be satisfactory. They are: (1) sales which themselves occasion the import or export and (2) sales in the State which are effected by transfer of shipping documents, in the case of an importer, while the goods are beyond the customs frontier and, in the case of an exporter, after the goods have crossed the customs frontier. Section 3 of the Act defines the categories of sales which are said to take place in the course of inter-State trade or commerce. They are: (1) sales which occasion the movement of goods from one State to another and (2) sales effected by transfer of documents of title to goods during their movement from one State to another. The first explanation to this section states that the movement of the goods commences when goods are delivered to a common carrier or other bailee for transmission and it terminates when delivery is taken from such carrier or bailee. Section 4 which lays down the principles for determining the locale of a sale gives importance to the situation

of the goods and not to the residence of dealers or to the place where the contract of sale is made. Section 14 of the Act declares the goods which are of special importance in inter-State trade or commerce and section 15 specifies the restrictions and conditions in regard to the imposition of tax on the sale or purchase of declared goods.

Only those cases which arose on the interpretation of the provisions of the Central Sales Tax Act, 1956, are digested here. Cases which arose on the interpretation of Article 286 of the Constitution prior to its amendment by the Constitution (Sixth Amendment) Act, 1956, are digested under the heading "Constitution of India".

Central Sales Tax Act, 1956—Validity of provisions—Constitutional validity of section 8, Central Sales Tax Act—Same commodity exempted in one State and taxed in another State by operation of section 8 and taxation statutes of each State—Whether section violates Article 14 or is repugnant to Art. 303—Rule 14-A, Central Sales Tax (Andhra Pradesh) Rules, 1957—Whether ultra vires.—Section 8 of the Central Sales Tax Act, 1956, is not unconstitutional either on the ground that it is violative of the equal protection of laws embodied in Article 14 of the Constitution or on the ground that it is repugnant to Article 303 of the Constitution. A law cannot be struck down as infringing Article 14 of the Constitution on the ground that a combined operation of the law impeached and other laws made by other Legislatures will result in hostile discrimination against some individuals. In order to attract Article 14, such a consequence should flow from the operation of the challenged statute. The rule contained in section 8 is applicable to all the States alike operating equally in regard to every State and if in practice its effect is uneven with regard to dealers in a particular category of goods, it is not because of section 8 but because of the inequalities in the laws of different States in regard to the different categories of commodities. Article 303 of the Constitution relates only to discrimination based on entries contained in any of the lists of the Seventh Schedule relating to trade and commerce. The entries that have a bearing on trade and commerce are entry 42 in List I, entry 26 of List II and entry 33 of List III, whereas the Central Sales Tax Act is made by Parliament under entry 92A of List I. Therefore Article 303 cannot be invoked to strike down section 8 of the Act as discriminating between dealers of different States in the matter of granting exemption.—**EAST INDIA SANDAL OIL DISTILLERIES LTD. AND OTHERS v. THE STATE OF ANDHRA PRADESH** [1962] 13 S.T.C. 79 (A.P.).

—*Varying rates in different States on similar inter-State transactions—Validity of provisions of section 8(2), (2A) and (5) and section 9(3), Central Sales Tax Act—Whether provisions infringe Articles 301, 303(1), Constitution of India—Whether unconstitutional and void.*—The provisions of sub-sections (2), (2A) and (5) of section 8 of the Central Sales Tax Act, 1956, impose or authorise the imposition of varying rates of taxes in different States on the same or similar inter-State transactions, and the resultant inequality in the burden of tax affects and impedes inter-State trade, commerce and intercourse offending Articles 301 and 303(1) of the Constitution and are therefore unconstitutional and void. In order that trade in respect of particular goods declared or undeclared should be free throughout the territory of India, the rate of tax or exemption, as the case may be, must be uniform. The unequal burden because of different rates of tax or exemption in the State brings about inequality in the conditions and circumstances necessary for free flow of trade or commerce from one State to another. Differential rates or exemptions obtaining in the several States being automatically applied by virtue of section 8(2) to Central taxation, they will have the effect of discriminating between the goods of one State and the goods of another and will affect the free flow of trade in such goods as between the States. Sub-sections (2A) and (5) of section 8 will only aggravate the discrimination. When the Central Act adopts for purposes of section 8(2) the different rates or exemption under the State laws, its effect is as if such different rates or exemptions were provided by the Central Act itself. There is no difference between Parliament itself fixing differential rates or exemptions in respect of similar goods in different States, and Parliament, instead of doing so, adopting and applying such rates and exemptions under diverse State laws. The tax raised by the Central Sales Tax Act, 1956, is a Central tax. The conflicting orders by the authorities of the different States in respect of same transactions result not from what Parliament has sanctioned or intended but have their origin to erroneous interpretation or application of the provisions of the Central Act according to the judgments of the authorities in each of the States. Though it is advisable and necessary to relieve hardship and to set up a common authority to resolve conflicting assessments, the absence of it does not affect the validity of section 9(3). Having regard to section 9(4), the procedure envisaged by section 9(3) is grounded on convenience and it is not open to challenge on the ground of procedural restraint as it is called.

In the matter of non-deductibility of excise duty from the turnover of inter-State sales, the Central Act has equal application and makes no discrimination and there is, therefore, no question of inequality or discrimination forbidden by Article 303(1) and there is no question of contravention of Article 301 either.—*LARSEN AND TOUBRO LTD., MADRAS-2, AND OTHERS v. JOINT COMMERCIAL TAX OFFICER, MOUNT ROAD II DIVISION, MADRAS-2, AND OTHERS* [1967] 20 S.T.C. 150 (Mad.). On appeal to Supreme Court this decision was reversed. See below :—

—*Varying rates in different States on similar inter-State transactions—Provisions providing exemption on the basis of State law and empowering State Governments to exempt subject to conditions—Whether restriction on freedom of trade, commerce and intercourse—Validity of provisions of section 8(2), (2A) and (5), Central Sales Tax Act—Whether provisions unconstitutional and void—Constitution of India, Articles 301, 302, 303.*—Sub-sections (2), (2A) and (5) of section 8 of the Central Sales Tax Act, 1956, do not infringe Article 301 and Article 303(1) of the Constitution of India and are therefore not *ultra vires* Parliament. Per SHAH, MITTER and VAIDIALINGAM, JJ.—(i) It must be taken as settled law that the restrictions or impediments which directly and immediately impede or hamper the free flow of trade, commerce and intercourse fall within the prohibition imposed by Article 301 and subject to the other provisions of the Constitution they may be regarded as void. (ii) It must be regarded as settled law that a tax may in certain cases directly and immediately restrict or hamper the flow of trade, but every imposition of tax does not do so. (iii) Article 301 does not merely protect inter-State trade or operate against inter-State barriers: all trade is protected whether it is intra-State or inter-State by the prohibition imposed by Article 301, and there is nothing in the language or the context for restricting the power of the Parliament which it otherwise possesses in the public interest to impose restrictions on the freedom of trade, commerce or intercourse, operative only as between one State and another as two entities. (iv) Exercise of the power to tax may normally be presumed to be in the public interest. (v) An Act which is merely enacted for the purpose of imposing tax which is to be collected and to be retained by the State does not amount to a law giving, or authorising the giving of, any preference to one State over another, or making, or authorising the making of, any discrimination between one State and another, merely because varying rates of tax prevail in different States. (vi) The flow of

trade does not necessarily depend upon the rates of sales tax; it depends upon a variety of factors, such as the source of supply, place of consumption, existence of trade channels, the rates of freight, trading facilities, availability of efficient transport and other facilities for carrying on trade. It is where differentiation is based on considerations not dependent upon natural or business factors which operate with more or less force in different localities that Parliament is prohibited from making a discrimination. Prevalence of differential rates of tax on sales of the same commodity cannot be regarded in isolation as determinative of the object to discriminate between one State and another. (vii) By leaving it to the States to levy sales tax in respect of a commodity on intra-State transactions no discrimination is practised; and by authorising the State from which the movement of goods commences to levy on transactions of sale Central sales tax, at rates prevailing in the State, subject to the limitation set out above, no discrimination can be deemed to be practised. (viii) Imposition of differential rates of tax by the same State on goods manufactured or produced in the State and similar goods imported in the State is prohibited by Article 304(a). But where the taxing State is not imposing rates of tax on imported goods different from rates of tax on goods manufactured or produced, Article 304(a) has no application. (ix) Article 303 prohibits the making of law which gives, or authorises the giving of, any preference to one State over another, or makes, or authorises the making of, any discrimination between one State and another. Prevalence of different rates of sales tax in the States which have been adopted by the Central Sales Tax Act for the purpose of levy of tax under that Act is not determinative of the giving of preference or making a discrimination. (x) In the matter of determining the taxable turnover the same rules will apply by virtue of section 9(1) of the Central Sales Tax Act, whether the tax is to be levied under the Central Sales Tax Act or the General Sales Tax Act. If under the Madras General Sales Tax Act, in computing the turnover, excise duty is not liable to be included and by virtue of section 9(1) of the Central Sales Tax Act, Central sales tax has to be levied in the same manner as under the Madras Act, the excise duty will not be liable to be included in the turnover for the purposes of Central sales tax. Per BACHAWAT, J.—Neither intra-State sales tax nor inter-State sales tax operates directly or immediately on the free flow of trade or the free movement or the transport of goods from one part of the country to another. None of the provisions of the Central Sales Tax Act, 1956, directly impede the

movement of goods or the free flow of trade. Even assuming that the Central Sales Tax Act, 1956, is within the mischief of Article 301, it is a law made by Parliament in the public interest and is saved by Article 302. Per HEGDE, J.—(i) Mere difference in rates is neither showing preference nor making discrimination but other things being equal, the difference in rates would result in showing preference to some States and making discrimination against others. Hence difference in rates is a *prima facie* proof of preference or discrimination. It is for the State to justify this difference. (ii) The differences in the rates under section 8 of the Central Sales Tax Act, 1956, are in the public interest, and these differences do not materially affect the free flow of trade in the country. (iii) None of the sub-sections [*viz.*, sub-sections (2), (2A) and (5) of section 8], has direct or immediate impact on inter-State trade or commerce. Decision of the Madras High Court in *Larsen and Toubro Ltd., Madras-2, and Others v. Joint Commercial Tax Officer, Mount Road II Division, Madras-2, and Others* [1967] (20 S.T.C. 150) reversed.—THE STATE OF MADRAS *v.* N. K. NATARAJA MUDALIAR [1968] 22 S.T.C. 376 (S.C.).

—*Higher rates on sales between unregistered dealers, or between registered dealers and unregistered dealers or consumers—Validity of section 8(2)(b)—Whether unconstitutional and void—Sales to Government—Higher rate for non-production of certificate—Validity of provision—Central Sales Tax Act (74 of 1956), Secs. 8, 9—Constitution of India, Articles 19(1)(f), 301.—Section 8(2)(b) of the Central Sales Tax Act, 1956, is in pith and substance a provision prescribing a higher rate of inter-State sales tax in certain events and is, therefore, a law on taxes on the sale or purchase of goods that takes place in the course of inter-State trade or commerce. Merely because the rate of tax is such that it may possibly discourage the taxable event, it will not *per se* cease to be a law with respect to taxation. Although section 8(2)(b) is in its effect prohibitive of inter-State transactions as between registered dealers in one State and unregistered dealers and consumers in another State, it is within the competency of Parliament under entry 92A of the Union List. The Central Sales Tax Act, as originally enacted, provided for inter-State rate in respect of non-declared goods which was lower than the local rate on similar goods. But a higher inter-State rate, but not exceeding the local multi-point rate, was enforced on transactions otherwise than through registered dealers. This structure of rates intended to keep effective the scheme of inter-State transactions through*

registered dealers with the object of regulating or controlling evasion did not in the least adversely affect the free flow of inter-State trade, but in a sense facilitated it. When the Act was amended by the Central Sales Tax (Amendment) Act, 1958, the principle of such a structure of rates has been borne in mind by the Legislature by inserting sub-section (2A) to section 8. But the application of the principle has been subjected by that provision to a ceiling lower than one per cent. local rate which has now been raised to three per cent. by stages. If the local rate is three per cent. or higher, the principle is reversed by section 8(2)(b) in respect of transactions outside the purview of section 8(1), with the result the rate of seven per cent. or ten per cent. or eleven per cent. or the State rate, whichever is higher, is applied to such transactions. The effect of this on the freedom of inter-State trade, commerce and intercourse is writ large; such a higher discriminatory rate will seriously impede, if not altogether stop, the inter-State sales or purchases as between a local dealer and out of State unregistered dealer or consumer in respect of all goods other than declared goods. Therefore apart from the grounds in *Larsen and Toubro Ltd. v. Joint Commercial Tax Officer* [1967] (20 S.T.C. 150), section 8(2)(b) is unconstitutional and void, but only to the extent of the difference in the inter-State rate provided by it by which such rate exceeds the intra-State single point or multi-point rate of tax for similar non-declared goods. The validity of the higher inter-State rate in section 8(2)(b) cannot be justified on the ground that it is designed to avoid or check evasion which is in the public interest. If, in providing for avoidance of evasion, the Legislature deliberately or inadvertently exceeded the limit drawn by the subject and object of the law and authorised a restriction which, in its effect, far from avoiding evasion, checks or prevents or prohibits, in the working, the very transactions chargeable to tax, it ceases to serve the purpose of the law. Such a restriction cannot be said to be required in the public interest in the context of the object of the Act and the effect of the restriction in relation to it. It cannot be said that the higher rate under section 8(2)(b) is, in its effect on the right to acquire, hold and dispose of property, an unreasonable restriction. When the rate of tax will become an unreasonable restriction is a question of degree. If the effect of the rate is such that it destroys totally, though indirectly, the right to hold property, it may be said to be an unreasonable restriction; but, if, on the other hand, that is not the case, where to draw the line at a lower level beyond which tax effect on account of the rate ceases to be a reasonable

restriction, is a difficult question which has to be decided in each case in the particular context and on the facts. It cannot be said that the higher rate in section 8(2)(b) is an unreasonable restriction. As the object of the higher rate is to raise more money for the Government, it is in the interests of the general public and therefore section 8(2)(b) does not offend Article 19(1)(f). Where the inter-State sales are by registered dealers to Governments, it may appear to be unreasonable to subject such dealers to a higher rate for non-production of the certificates in Form D because of delays on the part of the Governments and for no fault of theirs. But this situation arises not because of any inherent defect in section 8(1) and (4) requiring production of certificates in Form D but because of extraneous causes like delays on the part of Governments. The higher rate in such cases cannot be regarded as unreasonable or as a penalty and the opening words of sub-section (4) of section 8 to the effect that unless the conditions are satisfied, sub-section (1) will not apply cannot be said to be invalid on that ground. The Union Government may consider, where inter-State sales are made by registered dealers to Governments and there is clear proof, otherwise than by production of the required certificates in Form D, of the required particulars, whether the higher rate should nevertheless and necessarily be applied to them and a modification of the law in that regard is not reasonably called for.—SITALAKSHMI MILLS LTD., TIRUNAGAR, MADURAI, AND OTHERS *v.* THE DEPUTY COMMERCIAL TAX OFFICER, NO. IX, TEPPAKULAM NEW COLONY, MADURAI, AND OTHERS [1968] 22 S.T.C. 436 (Mad.).

Appeal to Supreme Court—Decision of High Court declaring certain provisions of Central Sales Tax Act, 1956, unconstitutional—Stay order obtained from Supreme Court operating only as between parties to appeal—Effect of decision of High Court on other assesses.—Where on a writ petition filed under Article 226 of the Constitution, certain sections of the Central Sales Tax Act, 1956, were declared unconstitutional by the High Court and thereupon the State appealed to the Supreme Court and obtained from the Supreme Court a stay order, which operated only as between the parties to the stay petition and the appeal, the decision of the High Court, till it is reversed, has to be given effect to and must be followed by the revenue in the State with respect to assesses or parties other than those in the appeal pending in the Supreme Court.—GARLICK AND COMPANY PRIVATE LIMITED, MADRAS-2 *v.* JOINT COMMERCIAL TAX OFFICER, MOUNT ROAD II DIVISION, MADRAS-2 [1968] 22 S.T.C. 209 (Mad.).

Appropriate State—Dealer registered in two States—Conflicting orders of assessments—Assessment of turnover by wrong State does not bar appropriate State from assessing identical turnover—Remedy of assessee—Declarations in C Form filed in one State—Claim for concessional rate in another State—Duty of authorities of that State to verify claim and give appropriate relief.—There can only be one charge under the Central Sales Tax Act, 1956, on identical inter-State turnovers but the levy and collection will have to be made by the appropriate State which is the State from which the goods have moved pursuant to the sale, and where a concessional rate under section 8(1) is claimed, the conditions therefor have to be fulfilled which include filing of declarations in C Form in the prescribed manner and before the prescribed authority in the appropriate State. A plea that a wrong State has already assessed will be no answer to an appropriate State bringing to tax transactions liable to be brought to charge by that State. At the same time it is implicit in the scheme of things that both the provisions of law as well as the character and effect of particular transactions may possibly be differently interpreted by assessing authorities in different States, resulting in a dealer being taxed on identical transactions by more than one State. This appears to be inevitable because of the local procedure applied to Central taxation under section 9(3). The conflict and consequent hardship to the assessee will get resolved or relieved only at the hands of a final arbiter. In cases of such conflicting assessments by authorities in different States of identical inter-State transactions, where a question of filing of declarations in Form C is involved, if it is brought to the notice of the assessing authority in an appropriate State that the identical turnover has been assessed by another State claiming jurisdiction over it and allowed a concessional rate on filing of such forms, the authority in the appropriate State cannot simply dismiss the assessee on the ground that he has failed to produce declarations in Form C, and proceed to assess him on that basis. It is incumbent upon the authority of the appropriate State to ask and verify from the other authority before whom C Forms are claimed to have been filed whether it is so and they satisfy the conditions for the concessional rate under section 8(4). He is for that purpose entitled to call for the C Form declarations from the other authority and return them after the purpose is over or retain them with the consent of the other officer as part of his assessment proceedings. This is not merely by way of courtesy or for the sake of fairness. Apart from the obligation being involved in the procedural

scheme of assessments by the States under the Central Act, Article 261 of the Constitution enjoins that full faith and credit should be given throughout the territory of India to public acts, records of judicial proceedings of the Union and of every State. Assessment proceedings are quasi-judicial in character and documents filed in the course of such proceedings are part of the records therein. *Larsen and Toubro Ltd., Madras-2 v. The Joint Commercial Tax Officer, Mount Road II Division, Madras-2, and Others* [1967] (20 S.T.C. 150) referred to.—S. MOHAMED IBRAHIM HADHEE *v. THE STATE OF MADRAS* [1968] 21 S.T.C. 378 (Mad.).

Refund—Set-off—Refund under Central Sales Tax Act, 1956—Whether can be adjusted towards tax due under Mysore Sales Tax Act, 1957—Mysore Sales Tax Rules, 1957, Rule 20.—Under rule 20 of the Mysore Sales Tax Rules, 1957, it is not possible to adjust the tax refundable under the Central Sales Tax Act, 1956, against the tax due under the Mysore Sales Tax Act, 1957. The fact that even the tax levied under the Central Act is ultimately intended for State purposes and may therefore get directly credited into the Consolidated Fund of the State, would make no difference, because the two taxes are distinct and different, and levied under two different statutes, one of the State Legislature and the other of Parliament.—*COTMAC PRIVATE LTD. v. COMMERCIAL TAX OFFICER, 1ST CIRCLE, HUBLI, AND ANOTHER* [1967] 20 S.T.C. 20 (Mys.).

Sales to dealers in Jammu and Kashmir State when Central Sales Tax Act, 1956, was not extended to that State—Although the Central Sales Tax Act, 1956, was not extended to the State of Jammu and Kashmir till 13th March, 1958, sales which occasioned the movement of the goods from the Madras State to the State of Jammu and Kashmir were inter-State sales.—*S. MARIAPPA NADAR AND OTHERS v. THE STATE OF MADRAS* [1962] 13 S.T.C. 371 (Mad.).

—Under the Central Sales Tax Act, 1956, prior to its amendment by Act 5 of 1958 whereby the words "except the State of Jammu and Kashmir" were omitted from section 1(2), sales tax could be imposed on a transaction of sale or purchase which took place in Amritsar but occasioned the movement of the goods from the Punjab State to the State of Jammu and Kashmir. A taxing statute calls for a construction in accordance with the legislative intent as manifested by the statutory language so as to effectuate the legislative purpose bearing in mind that the tax laws are enacted for practical ends. The true meaning must be discovered from the

context and purpose of the provisions and their vitality must never be allowed to be frittered away by technical requirements. In the Republic of India taxing statutes are designed to see that the burden of taxation falls equally and uniformly avoiding, as far as possible, unjust or unreasonable results. *S. Mariappa Nadar and Others v. The State of Madras* [1962] (13 S.T.C. 371) referred to.—*NAND LAL HIRA LAL v. THE PUNJAB STATE* [1965] 16 S.T.C. 967 (Punj.).

Central Sales Tax Act (74 of 1956), Secs. 2, 3, 4, 9—Appropriate State—Unascertained goods—Sales falling within sec. 3(b)—Appropriate State entitled to levy sales tax.—Where a transaction of sale is an inter-State sale as contemplated by section 3(b) of the Central Sales Tax Act, 1956, by virtue of Explanation 2 to section 2(a) the appropriate State that would be entitled to tax the sale would be the State in which the sale is effected. Where the goods are unascertained, the place where the sale is effected will have to be determined under s. 4(2)(b). Under s. 4(2)(b) the place of sale depends upon the location of the goods at the time of their appropriation to the contract of sale. Section 4(2)(b) does not require an unconditional appropriation as required by section 23 of the Sale of Goods Act, 1930. The term “appropriation” may be used in the sense that the goods are identified by the agreement of the parties as the goods about which they are contracting, so that the contract can never apply to any other goods. In other words, the goods are so far appropriated that the seller would, by delivering any other goods, break the contract though the goods still remain the seller's property. The scheme of the Sales Tax Act goes to show that the Parliament left out of account the element of passing of property as of any relevance in determining the situs of sale and the question of appropriation of goods has to be decided, irrespective of the passing of property. In other words, the appropriation referred to in section 4(2)(b) connotes the setting apart of goods as specific goods to be delivered under the contract of sale and not an appropriation linked with passing of property. Where the Sales Tax Officer, New Delhi, took the view that certain transactions were in the nature of inter-State sales as contemplated by section 3(b), having been effected when the goods were in movement from Uttar Pradesh to Delhi, he could not assume jurisdiction to levy or collect sales tax unless he gave a clear finding that the goods were appropriated to the contract in Delhi. *Tata Iron and Steel Co. Limited, Bombay v. S. R. Sarkar and Others* [1960] (11 S.T.C. 655) referred to.—*THE INDIAN WOOD PRODUCTS COMPANY*

LIMITED v. THE SALES TAX OFFICER, WARD No. 13, NEW DELHI, AND OTHERS [1968] 21 S.T.C. 437 (Delhi).

—**Sec. 2(a)**—See also Sec. 3.

—**Sec. 2(b)**—*Sale of agricultural produce—Rubber company converting latex into sheets and selling them—Whether dealer.*—An agriculturist selling his own produce either as gathered or after subjecting it to the minimum requirements necessary for transport and marketing cannot be considered to be a person engaged in the business of selling. The sale which he effects is only the culmination of his agricultural operations; it is not separate and distinct from his agricultural avocation; and he cannot be considered to be a person carrying on a business of selling simply because he effects a sale of his own agricultural produce. Where what all a company growing rubber trees did was to convert the latex tapped from its rubber trees into sheets and effect sales of those sheets to its customers, the company was not a dealer within the meaning of section 2(b) of the Central Sales Tax Act, 1956, inasmuch as the conversion was not a manufacturing process but a process essential for the transport and marketing of rubber.—*DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX, QUILON v. TRAVANCORE RUBBER AND TEA CO., LTD.* [1964] 15 S.T.C. 615 (Ker.). Affirmed on appeal to Supreme Court. See below.

—**Sec. 2(b)**—*Latex produced from assessee's rubber trees converted into sheets—Conversion a process essential for transport and marketing latex—Assessee, whether dealer.*—Where the only facts that were established were that the assessee converted the latex tapped from its rubber trees into sheets and effected a sale of those sheets to its customers and that the conversion of latex into sheets was a process essential for the transport and marketing of the produce: *Held*, that the onus of proving that the assessee was carrying on business and was, therefore, a “dealer” within the meaning of section 2(b) of the Central Sales Tax Act, 1956, was on the department and that the department had not discharged that onus. *State of Gujarat v. Raipur Manufacturing Co. Ltd.* [1967] (19 S.T.C. 1) applied. Decision of the Kerala High Court in *Deputy Commissioner of Agricultural Income-tax and Sales Tax, Quilon v. Travancore Rubber and Tea Co. Ltd.* [1964] (15 S.T.C. 615) affirmed.—*DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX, QUILON v. TRAVANCORE RUBBER AND TEA CO.* [1967] 20 S.T.C. 520 (S.C.).

—**Sec. 2(b)**—“*Dealer not registered under this Act*” in section 5(4), Explanation I, clause (ii), *Mysore Sales Tax Act, 1957—Meaning of.*—When the

Legislature used the expression "dealer not registered under this Act" in clause (ii) of Explanation I to section 5(4) of the Mysore Sales Tax Act, 1957, as it stood on 1st January, 1959, it used the expression "dealer" as defined in section 2(b) of the Central Sales Tax Act, 1956.—*SHA NATHUMAL GOMAJI & Co. v. THE STATE OF MYSORE* [1964] 15 S.T.C. 29 (Mys.).

—**Sec. 2(b), (g)**—*Supply of charmed tawiz to people in distress—Liability to sales tax.*—The assessee carried on the business of supplying charmed tawiz to people in distress. The procedure adopted by the assessee was that small articles made either of cloth or of metal, which were intended to be worn, were taken to one or the other of three Mullas employed by the assessee and the Mullas used to impart charm to them by reciting prayers from the Koran, and then write some words from the Koran on a slip of paper which used to be placed inside each of those articles of cloth or metal. Those articles were thereafter given by the assessee to people in distress, either financially or otherwise, for amounts varying from Rs. 5 to Rs. 25. The assessee also used to advertise in respect of her charmed tawiz in several newspapers. The Sales Tax Tribunal held that the contracts in respect of charmed tawiz between the assessee and her customers were essentially and substantially contracts for the supply of spiritual service for meeting the individual requirements of the customers and not transaction of sale of chattles *qua* chattles. On a reference: *Held*, that as it was admitted that the assessee was charging only for the spiritual services rendered when she was disposing of the charmed tawiz to her customers, it could not be said that the transaction was a sale of the charmed tawiz as a chattel.—*COMMISSIONER OF SALES TAX v. M/s. HABIBULLA SAHEB* [1968] 22 S.T.C. 219 (Bom.).

—**Sec. 2(b), (h), (j)**—*Packing materials—Inter-State sales—Potatoes exempted by notification—Sale of potatoes packed in gunny bags—Value of gunny bags—Whether liable to sales tax—“Charges for packing and delivery”, meaning of—Madras General Sales Tax (Turnover and Assessment) Rules, 1939, Rule 5(1)(g)(ii).*—The expression "charges for packing and delivery" mentioned in rule 5(1)(g)(ii) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, means charges for labour expended in regard to packing and delivery. It does not take in the cost of material supplied for the purpose of packing and delivering the goods. The respondent was a dealer in potatoes and he sold potatoes packed in gunny bags. Potatoes were exempted from the payment of sales tax by a notification dated 28th February, 1955. The respondent's turnover, consisting of inter-State

sales of potatoes, was exempted from sales tax, but he was assessed to tax under the Central Sales Tax Act, 1956, on the value of gunnies in which the potatoes were packed. It was found that the price charged for a bag of potatoes was an all-inclusive one and took in a sum of about Rs. 2-4-0 generally as representing the value of the gunnies and the charges for packing. The respondent contended that the value of gunnies was also exempted under the notification and that he was not a dealer in respect of the packing materials for the reason that his business was concerned with the sale of potatoes and not gunnies: *Held*, (1) that in order to satisfy the definition of a "dealer" what is needed is that a person should carry on the business of buying or selling goods, and that as the respondent was buying and selling gunnies he was a dealer within the meaning of the definition; (2) that the price paid to the respondent comprehended the price of gunnies also and that there was an implied contract in the case for the sale of gunnies; (3) that it was not the turnover of the business of potatoes that was exempted, but the exemption was confined only to the price paid for potatoes as such. The turnover in relation to gunny bags was quite distinct and separate from the turnover as regards potatoes; (4) that rule 5(1)(g)(ii) did not enable the respondent to deduct the value of gunny bags from his turnover; (5) that the respondent sold gunny bags in the course of his business and therefore he was liable to sales tax on the value of gunny bags.—*THE STATE OF MADRAS AND OTHERS v. R. DAMODARAN CHETTIAR & Co.* [1966] 18 S.T.C. 451 (Mad.).

—**Sec. 2(d)**—*Animals and birds in captivity—Whether "goods" liable to tax under Central Sales Tax Act, 1956—Competence of Parliament to levy tax on sale of such things.*—Animals and birds in captivity (monkeys, minahs and parrots) are movable property and they are therefore "goods" as that word is defined in section 2(d) of the Central Sales Tax Act, 1956. Even if the sale of such things would not fall within entry 54 of List II of the Seventh Schedule of the Constitution or entry 92A of List I, it would fall within entry 97 of List I and Parliament would be competent to levy a tax on such sales.—*K. J. ABRAHAM v. THE ASSISTANT SALES TAX OFFICER, ALWAYE* [1960] 11 S.T.C. 291 (Ker.).

—**Sec. 2(d)**—*Whether electricity is "goods".*—Electricity is "goods" for the purposes of the Madras General Sales Tax Act, 1959, and the Central Sales Tax Act, 1956. *Rash Behari v. Emperor* (A.I.R. 1936 Cal. 753) dissented from. *Naini Tal Hotel v. Municipal Board* (A.I.R. 1946 All. 502) relied on.—*KUMBAKONAM ELECTRIC*

SUPPLY CORPORATION LTD. v. JOINT COMMERCIAL TAX OFFICER, ESPLANADE DIVISION, MADRAS [1963] 14 S.T.C. 600 (Mad.).

—**Sec. 2(g)**—*Two firms having identical partners but different shares—Transfer of goods from one firm to another firm—Whether sale and liable to sales tax.*—To constitute a “sale” within the definition of that word in the Central Sales Tax Act, 1956, there must be two different persons, in the ordinary sense of the term person. When two firms having identical partners transfer goods from one to the other, it will be really a case of one person transferring goods to himself and there will therefore be no “sale”. Even if the shares of the partners in the two firms are different, it will not make any difference to the character of the transaction. The difference in the shares of the partners will have relevance only at the time when the profits and losses are ascertained and divided. When assets of the partnership are dealt with either for the purpose of acquisition or for sale, it cannot be predicated that the partners have specified shares in such assets. They have all got a common right of ownership in the property dealt with.—**MAHENDRA KUMAR ISHWARLAL & COMPANY v. THE STATE OF MADRAS** [1968] 21 S.T.C. 72 (Mad.).

—**Sec. 2(h), (j)**—*Sale price—Deductions—Packing materials—Sale of compressed cotton in bales—Adat, dalali, bank commission, charity and insurance added to purchase price and realised from purchasers—Whether can be included in sale price—Whether there is sale of packing materials.*—The assessee, a dealer in cotton, sold in the course of inter-State trade during the period 1st April, 1959, to 31st October, 1959, compressed cotton in bales covered with hessian cloth and fastened with iron hoops. In assessing the assessee under the Central Sales Tax Act, 1956, the assessing officer included in the taxable turnover, the estimated price of the packing materials, and the amounts received by the assessee from the purchasers by way of Central sales tax, *adat*, *dalali*, bank commission, charity and insurance. The assessee admitted before the Deputy Commissioner of Sales Tax that (1) he added to the purchase price *dalali*, *adat* and other charges and realised the aggregate of such amounts from the purchasers; (2) the property in the hessian cloth and iron hoops passed to the purchasers and he charged the purchasers a composite price for the compressed cotton and packing materials: *Held*, (1) that, on the facts and circumstances of the case, charges in respect of *adat*, *dalali*, bank commission, charity and insurance incurred by the assessee could be included in the sale price and could be taxed in the hands of the assessee; (2) that, on the facts

and circumstances of the case, an inference could be drawn that an implied contract existed for the sale of packing materials, i.e., *bardana* and iron hoops, along with pressed cotton bales, and the estimated price of the *bardana* could be included in the taxable turnover of the assessee. If there was an implied contract for the sale of packing materials, then the mere fact that the price of the packing materials was not separately fixed made no difference to the assessment of sales tax. **Nemkumar Kesrimal v. Commissioner of Sales Tax, Madhya Pradesh** [1955] (6 S.T.C. 222) distinguished. Principles laid down in **Nimar Cotton Press v. Sales Tax Officer, Nimar Circle, Khandwa** [1961] (12 S.T.C. 313) and **The Nimar Cotton Press Factory v. The Commissioner of Sales Tax, Madhya Pradesh, Indore** [1968] (21 S.T.C. 505) applied.—**VIMAL CHAND PRAKASH CHAND, SARAF, UJJAIN v. COMMISSIONER OF SALES TAX, MADHYA PRADESH** [1968] 22 S.T.C. 22 (M.P.).

—**Sec. 2(h)**—*Packing charges—Deductions—Sale of kerosene in sealed tins—Value of tins specified and charged for separately—Whether can be deducted from taxable turnover—Maintainability of petition under Article 226 when there is another alternative remedy.*—In order to decide whether an amount obtained by a dealer from his purchaser is a charge for packing and delivery, the Court must first decide what is the item sold, and then find out whether the amount involved is a charge for the packing and delivery of that item. If what is sold is kerosene, then it has certainly to be packed in a container before delivery, and the charge for packing the kerosene in a container, if specified and charged for separately, will come within the ambit of rule 9 of the Kerala General Sales Tax Rules, 1963. If, on the other hand, what have been sold are sealed tins of kerosene, then the articles sold are packaged articles and no further packing in any container will be usual or necessary. In other words, the value of the packing when the article sold is a packaged article cannot be considered as coming within the expression “charges for packing and delivery” in rule 9 of the Rules. Where the assessee has not chosen to resort to the remedies by way of appeal under section 39 and revision to the High Court under section 41 of the Kerala General Sales Tax Act, 1963, a petition under Article 226 should be considered as unsustainable.—**M. KUTTY HASSAN KUTTY v. SALES TAX OFFICER, PONNANI** [1967] 19 S.T.C. 278 (Ker.).

—**Secs. 2(h), 8**—*Composite contract for designing the fabrication, supply and erection at customer's site of steel work for customer's factory—Whether works contract or contract for sale of specific goods—Contract for fabrication and installation of bottle*

cooling equipment—Whether works contract.—Under a contract with a co-operative society for the fabrication, supply and erection of steel structures for a sugar factory in the State of Mysore, the respondent, which carried on business in Madras as engineers and contractors and as dealers in iron and steel goods and refrigerating and cooling units, received the sum of Rs. 3,26,075.20 which was included in the turnover of the respondent for assessment to Central sales tax. There was no formal contract but the agreement between the respondent and the society had to be ascertained from the correspondence between them. In December, 1956, the co-operative society informed the respondent by a letter that it had placed an order for a sugar plant and machinery for manufacture of sugar and it had to design the factory. The respondent, in January, 1957, quoted the rate of Rs. 1,160 per ton for the "fabrication, supply and erection at site of all steelwork in columns, trusses, purlins, bracings, side-claddings, supports, crane girders etc., including supply of all rivets, bolts and nuts and painted one shop coat of red oxide before despatch"; and the rate of Rs. 25 for erection of A.C. roofing, and side-cladding sheets with A.C. accessories including supply of all G.I. bolts, nuts and washers, the A.C. materials being supplied by the society at site. The rate quoted for the steelwork was for delivery f.o.r. its works siding at Madras and all freight, unloading and cartage charges from Madras were to be at the society's responsibility and cost. In February, 1957, the society requested the respondent to proceed with the preparation of works, drawings etc., and subsequently in July, 1957, the respondent informed the society about the delivery programme for the factory steelwork erection under several heads such as godown, boiling house, mill house, power-house etc., and fixed various dates for the despatch of materials, commencement of erection and completion of the steelworks. In January, 1958, the society informed the respondent regarding the programme of construction of building column foundation and machinery foundations, erection of factory buildings and machinery, and asked the respondent to co-ordinate its work accordingly. On a consideration of the correspondence between the parties the High Court concluded that: (a) there was a stipulation for a consolidated lump sum payment of Rs. 1,160 per ton for fabrication, supply and erection at site of all steelwork etc.; (b) there was no provision for the passing of property in the goods to the factory before the actual completion of the erection work; (c) there was no provision under the contract for dissecting the value of the goods

supplied and the value of the remuneration for the work and labour bestowed in the execution of the work; (d) the respondent was not a dealer carrying on business in the steel and component parts required for the erection work and the component parts had to be specially fabricated so as to be suitable for particular erection work; and (e) the predominant idea underlying the contract was the bestowing of special skill and labour by the experienced engineers and mechanics of the respondent. In bills submitted by the respondent from time to time charge was made under the head "fabrication and supply of steelwork" at the rate of Rs. 1,100 per ton: *Held*, on the facts, that the contract was a works contract and not one for sale. There was no warrant for assuming from the preparation of the bills at the rate of Rs. 1,100 per ton that there were two contracts, one for the supply of fabricated steel parts at the rate of Rs. 1,100 per ton and another for remunerating the respondent for erection of the steel parts at the rate of Rs. 60 per ton. Under the Central Sales Tax Act, 1956, turnover from sale of goods alone is chargeable to tax. To make the consideration received under the agreement between the respondent and the society liable to sales tax it had to be established that the respondent had sold specific goods. It had, therefore, to be established that the consideration was received under a contract to sell specific goods for a price, and property in the goods contracted to be sold passed to the society when the goods were delivered in pursuance of the contract. If the contract was for completing the stipulated work and for that purpose to use materials belonging to the respondent in the performance or execution of the contract as accessory to "work and labour" the contract must be regarded as a works contract, and not a contract for sale, even if the property in the goods ultimately passed as a result of the contract. The respondent entered into contracts with the customers at an inclusive price for the work of fabrication of bottle cooling equipments required in the premises of the customers and for installation of the equipments. Under the contract the respondent undertook to fabricate different parts of the unit according to the special requirements of the customer and to instal the unit in the premises of the customer. Each bottle cooling unit required special fabrication and had to be installed at the place selected by the customer and found suitable for installation of the unit: *Held*, on the facts, that the contract being one for supplying for an inclusive price a specially designed fabricated unit to be assembled and installed by specially trained technicians in the premises of the

customer, it was not a contract for sale of a unit or different parts of the unit as specific goods, but was a works contract. Decision of the Madras High Court in *Richardson and Cruddas Ltd. v. The State of Madras* [1965] (16 S.T.C. 827) affirmed.—*THE STATE OF MADRAS v. RICHARDSON & CRUDDAS LTD.* [1968] 21 S.T.C. 245 (S.C.).

—SECS. 3(a), (b), 2(a), 4(2)—*Tax on inter-State sales—Transfer of documents of title to goods—Place where sale is effected—Scope of section 3(a) and (b)—Applicability of section 4(2)—Company having factory in Bihar and head sales office in West Bengal—Movement of goods from Bihar to West Bengal—Transfer of documents of title in West Bengal—Power of West Bengal to tax such sales.—Held, by the majority (SINHA, C.J., IMAM and SHAH, J.J.)—A transaction of sale is subject to tax under the Central Sales Tax Act, 1956, on the completion of the sale, and a mere contract of sale is not a sale within the definition in section 2(g). A sale being by the definition, transfer of property, becomes taxable under section 3(a) if the movement of goods from one State to another is under a covenant or incident of the contract of sale, and the property in the goods passes to the purchaser otherwise than by transfer of documents of title when the goods are in movement from one State to another. In respect of an inter-State sale, the tax is leviable only once and the two clauses of section 3 are mutually exclusive. A sale taxable as falling within clause (a) of section 3 will therefore be excluded from the purview of clause (b) of section 3. The sale contemplated by clause (b) of section 3 is one which is effected by transfer of documents of title to the goods during their movement from one State to another. Where the property in the goods has passed before the movement has commenced, the sale will not fall within clause (b); nor will the sale in which the property in the goods passes after the movement from one State to another has ceased be covered by the clause. Accordingly a sale effected by transfer of documents of title after the commencement of the movement and before its conclusion as defined by the two termini set out in Explanation (1) and no other sale will be regarded as an inter-State sale under section 3(b). Although the definition of “sale” includes transfer of goods on hire-purchase or other systems of payment by instalments, a mere contract of sale which does not result in transfer of property occasioning movement of goods from one State to another does not fall within the terms of section 3(a). That transaction alone in which there is “transfer of goods” on the hire-purchase or other systems of payment by instalments is included in the definition of “sale”.*

Under the Explanation to section 2(a), in cases of sales falling within section 3(a), the place of business is the place from which movement has commenced and in cases of sales falling within section 3(b), it is the place where the sale is effected. But there is in the Explanation no material for ascertaining the place where the sale is effected. Clause (2) of the Explanation does not seek to locate the place where the sale is effected, in cases falling within clause (b) of section 3, at the place where the transfer of documents of title to the goods was effected. Sub-section (2) of section 4 defines what sales or purchases shall be deemed to take place inside a State and the terms of that sub-section are quite general. The clause however does not deal with the conditions which “effect” a sale. There is no warrant for the view that sub-section (2) of section 4 only seeks to locate the place of sales which are not in the course of inter-State trade or commerce. It is also not correct to say that section 4 only seeks to define “outside sales” and is not intended to locate the place where a sale is effected. But sub-section (1), having been made subject to the provisions contained in section 3, only those sales which are not in the course of inter-State trade or commerce should be determined under sub-section (1) of section 4 as having taken place outside a State. Under the Sale of Goods Act, 1930, if a document of title to goods is used in the ordinary course of business as proof of possession or control of goods, endorsement or delivery thereof according to mercantile practice will amount to delivery of goods thereby represented. The transfer of documents contemplated by section 3(b) is therefore such transfer as in law amounts to delivery of the goods. Transfer of documents either by endorsement or delivery does complete transfer of title, but in the absence of an indication to that effect in the statute, the place where the documents are transferred is not the place of sale. In interpreting the definition clauses in sections 3, 4 and 5, it would be inappropriate to requisition in aid the observations made in decisions in ascertaining the true nature and incidents without the assistance of any definition clause of “sales outside the State”, “sales in the course of import or export” and “sales in the course of inter-State trade or commerce” used in Article 285. The assessee-company had its registered office in Bombay, its head sales office in Calcutta in the State of West Bengal and its factories in Jamshedpur in the State of Bihar. The company was registered as a “dealer” under the Bihar Sales Tax Act, 1947, and was also registered as a “dealer” in the State of West

Bengal under the Central Sales Tax Act, 1956. For the period of assessment 1st July, 1957, to 31st March, 1958, the State of West Bengal assessed the company to tax under section 3(b), on sales where goods were under the contract of sale moved from Bihar to West Bengal and the documents of title to the goods sold were transferred in West Bengal. The company, which had paid tax on such sales to the State of Bihar, filed a petition under Article 32 of the Constitution and contended that such sales were not taxable by the State of West Bengal: *Held*, (i) *per curiam*, that the petition under Article 32 of the Constitution was maintainable; (ii) by the majority (SINHA, C.J., IMAM and SHAH, J.J.) that the assessment order should be quashed and that the officer had to ascertain before he could order payment of tax under the Act, whether on the materials he was satisfied (a) that the goods at the time of transfer of documents of title were in movement from the State of Bihar to the State of West Bengal, and (b) that the place where the sale was effected was under section 4(2) within the State of West Bengal. *Per* SARKAR and DAS GUPTA, J.J.—Clauses (a) and (b) of section 3 of the Central Sales Tax Act, 1956, are mutually exclusive and a sale cannot therefore fall under both the clauses and cannot be taxed twice. A “sale occasions the movement” of goods within the meaning of section 3(a) when the contract of sale so provides. Clause 3(b) refers only to sales where transfer of property in the goods sold takes place by the transfer of documents of title to them during their movement from one State to another. The two clauses would often overlap and to avoid it one has to exclude from clause (a) such of the sales coming under it in which the property in the goods passes by a transfer of documents of title to them, during their movement. Clause (a) therefore contemplates a sale where under the contract of sale the goods sold are moved from one State to another, provided however that such a sale will not come under clause (a) but fall under clause (b) if the property in the goods sold is passed by a transfer of the documents of title to them during their movement from one State to another. Clause (b), on the other hand, contemplates a sale where the property in the goods sold is passed by a transfer of documents of title to them during their movement from one State to another. A sale contemplated by section 3(b) is effected within the State in which the documents of title to goods sold are transferred resulting in a transfer of the property in them; that State is the “appropriate State” in respect of such sale. In this view of the matter no question of resorting to section 4(2) for fixing the place where a sale

under section 3(b) is effected, arises. The place of that sale is fixed by clause (ii) of the Explanation in section 2(a) itself. Section 4(2) was not enacted for determining which is an “appropriate State” to collect the tax in the case of a sale falling under clause (b) of section 3. The transfer of documents of title to the goods sold can pass the property in them only if the parties agree that that would be the result.—TATA IRON AND STEEL CO., LIMITED, BOMBAY *v.* S. R. SARKAR AND OTHERS [1960] 11 S.T.C. 655 (S.C.).

—**Sec. 3—Cement marketing company having office within State accepting orders and directing factories outside State to supply cement to customers within State—Actual delivery within State—Transactions, whether inter-State sales—Constitution of India, Art. 286(2)—Mysore Sales Tax Act (46 of 1948).**—The first appellant was the sales manager of the second appellant, who was manufacturing cement and was having factories in different parts of India outside the State of Mysore. The first appellant with its head office in Bombay and a branch office in Bangalore was a registered dealer under the Mysore Sales Tax Act, 1948. Persons desirous of buying cement had to get an authorisation in a standard form which authorised the first appellant to sell and supply cement in quantities and from the factory mentioned therein. The buyer then placed an order with the first appellant who accepted the order and instructed its Bombay office to despatch the cement in accordance with the instructions of the buyer and the authorisation. A copy of the letter of instruction was sent to the factory from where the goods were to be despatched and the particulars of the authorisation were mentioned therein. Thereafter the first appellant sent an advice to the buyer enclosing therewith the railway receipt for the goods and the particulars of the authorisation. Both the contract of sale and the advice stated that the goods were being despatched at the buyer's risk from the time delivery was made by the factory to the carriers and the railway receipt was obtained for the goods. In respect of the period of assessment from 6th September, 1955, to 31st March, 1956, both the Sales Tax Authorities and the High Court held that as the actual delivery of the goods to the buyers was made within the State of Mysore, the sales were intra-State sales and liable to be taxed under the Mysore Sales Tax Act, 1948: *Held*, that the sales were inter-State sales and exempt from sales tax because under the contract of sale there was transport of the goods from outside the State of Mysore into the State of Mysore and the transactions themselves involved movement of goods

across the border. Decision of the Mysore High Court in *Cement Marketing Co. of India (Private) Ltd. and Another v. The State of Mysore and Another* [1960] (11 S.T.C. 411) reversed.—THE CEMENT MARKETING CO. OF INDIA (PRIVATE) LTD. AND ANOTHER *v.* THE STATE OF MYSORE AND ANOTHER [1963] 14 S.T.C. 175 (S.C.).

—Sec. 3—When “sale occasions movement of goods from one State to another”—Contract for sale of cement—Whether contains provision for movement of goods—Whether inter-State sale—Contract should be read as subject to terms of permit—Taxing inter-State sales under local law—Maintainability of petition under Art. 32, Constitution of India.—A sale occasions the movement of goods from one State to another within section 3(a) of the Central Sales Tax Act, 1956, when the movement “is the result of a covenant or incident of the contract of sale”. Although a contract of sale of cement did not itself contain any covenant that the supply had to be made from any particular factory, as the contract was subject to the terms of the permit which provided that the supply had to be made from one or other factory situated outside Mysore State, the contract must be deemed to have contained a covenant that the cement would be supplied in Mysore from a place situated outside its borders and a sale under such a contract would clearly be an inter-State sale as defined in section 3(a) of the Central Sales Tax Act, 1956. Where the taxing officer has no jurisdiction to tax inter-State sales, there being a constitutional prohibition against a State taxing them, he cannot give himself jurisdiction to do so by deciding a collateral fact wrongly and in such a case a petition under Article 32 of the Constitution is maintainable. *Ujjam Bai v. State of Uttar Pradesh* [1962] (A.I.R. 1962 S.C. 1621) distinguished. *Tata Iron and Steel Co. Ltd. v. S. R. Sarkar* [1960] (11 S.T.C. 655; [1961] 1 S.C.R. 379) referred to.—THE STATE TRADING CORPORATION OF INDIA LIMITED AND ANOTHER *v.* THE STATE OF MYSORE AND ANOTHER [1963] 14 S.T.C. 188 (S.C.).

—Sec. 3—Sale of cement—Movement of goods across State border under contract of sale—Transactions during period 1st April, 1956 to 31st March, 1957—Whether inter-State sales and not liable to tax under local Act—Constitution of India, Art. 286(2) before and after amendment by Constitution (Sixth Amendment) Act, 1956.—Inter-State sales contemplated by Article 286(2) of the Constitution of India before it was amended by the Constitution (Sixth Amendment) Act, 1956, were the same as those defined in section 3(a) of the Central Sales Tax Act, 1956. During the period when Art. 286(2) did not exist in the Constitution and Parliament had not formulated principles defining an inter-State

sale, that expression had to be understood in its ordinary natural sense, that is, the sense in which the Supreme Court understood it in *Cement Marketing Co. of India (Private) Ltd. v. State of Mysore and Another* [1963] (14 S.T.C. 175). Therefore in respect of the three periods (i) 1st April, 1956, to 10th September, 1956, when the unamended Article 286(2) existed in the Constitution; (ii) 11th September, 1956, to 4th January 1957, when Article 286(2) did not exist in the Constitution and Parliament had not formulated principles defining an inter-State sale; and (iii) 5th January, 1957, to 31st March, 1957, when the Central Sales Tax Act, 1956, was in force, sales of cement under permits issued by the Government in which there was movement of goods from outside the State of Mysore into the State of Mysore under the contracts of sale, were inter-State sales which the State of Mysore had no power to tax. *Cement Marketing Co. of India (Private) Ltd. and Another v. The State of Mysore and Another* [1963] (14 S.T.C. 175) and *The State Trading Corporation of India Limited and Another v. The State of Mysore and Another* [1963] (14 S.T.C. 188) followed.—THE STATE TRADING CORPORATION OF INDIA LTD. AND OTHERS *v.* THE STATE OF MYSORE AND ANOTHER : No. 2 [1963] 14 S.T.C. 416 (S.C.).

—Sec. 3—Essential conditions for claiming exemption—Terms of sale should provide for delivery outside State—When exemption under Explanation to Article 286(1)(a) can be claimed—“Sale occasioning the movement of goods” in section 3(a), Central Sales Tax Act, 1956—Meaning of—Constitution of India, prior to its amendment by Constitution (Sixth Amendment) Act, 1956, Article 286(1)(a), (2).—The exact import of the expression “sale occasioning the movement of goods” in section 3(a) of the Central Sales Tax Act, 1956, is that the delivery outside the State should be under a covenant or as an incident of the contract of sale. In order to constitute inter-State trade or commerce within the meaning of Article 286(2) of the Constitution prior to its amendment by the Constitution (Sixth Amendment) Act, 1956, it is not sufficient if there is a sale and transportation of goods across the State's frontiers. There should also be a related connection between the sale and the movement of goods. The terms of sale should provide for the delivery being effected in another State. The assessee carried on business in coal with their collieries and head office in the State of Andhra Pradesh. Coal being a controlled commodity, the assessee was not at liberty to enter into contracts of sale with any party they liked and prices for the various categories of coal were fixed by the notification issued by the Ministry of Works, New Delhi. Persons or institutions in need of coal

applied to the Coal Controller for allotment of particular quantities of coal and the latter allotted specific quantity and gave intimation of such allotment to the allottees as also the assesseees. Pursuant to these allotments, orders were placed with the assesseees for the coal. The assesseees then called upon the allottees to remit the price in advance and to give the despatch instructions. After the receipt of the price and the instructions, the head office of the assesseees issued the sale note containing the conditions of the contract of sale between the parties and then instructed the collieries to despatch the goods to places indicated by the allottees and to send the railway receipts to the allottees by post. There was no express or implied term in the contract as to the place of delivery. The consignee in every case was the allottee, the assesseees being the consignor. The price quoted was F.O.R. collieries and the goods were booked "freight to pay". According to the conditions of sale, the assesseees were not responsible for non-delivery or late delivery and all duties, charges and cesses were to be paid by the buyers. The question was whether the sales of coal to parties outside the State were exempt from tax under Article 286 of the Constitution of India: *Held*, (1) that the assesseees transported the goods to various places outside the State as instructed by the parties and not as a condition attached to the contract of sale. The movement of the goods was subsequent to the completion of sale inside the State and therefore the transactions did not constitute inter-State trade or commerce so as to claim the exemption granted by Article 286(2) of the Constitution; (2) that in order that delivery for consumption in another State should come within the ambit of the Explanation to Art. 286(1)(a), it should be an integral part of the sale, and as the assesseees had not succeeded in proving that it was a term of the contract that the goods should be transported to places outside the State, they could not claim the exemption under the Explanation to Article 286(1)(a) for the period 1st April, 1956, to 10th September, 1956; (3) that as the assesseees had failed to prove that the sales subsequent to the 5th January, 1957, were invested with inter-State character, they would not come within the scope of section 3(a) of the Central Sales Tax Act, 1956.—*SINGARENI COLLIERIES CO., LTD. v. THE STATE OF ANDHRA PRADESH* [1961] 12 S.T.C. 765 (A.P.). On appeal to Supreme Court this decision was reversed. See [1966] 17 S.T.C. 197 (S.C.) below:—

—**Sec. 3—Coal supplied to consumers outside taxing State pursuant to directions of Coal Commissioner under Colliery Control Order, 1945—Sales whether inter-State—Whether outside the State—Hyderabad General Sales Tax Act, 1950—**

Constitution of India, Art. 286(1)(a), Explanation.—During the financial years 1954-55, 1955-56 and 1956-57, the appellant colliery supplied coal to allottees outside the taxing State (Hyderabad and after reorganisation Andhra Pradesh) pursuant to directions of the Coal Commissioner issued under the Colliery Control Order, 1945. Under that Order, the supply, use and disposal of coal were strictly regulated from the stage of production to that consumption. The procedure for the supply was as follows: The Coal Commissioner authorised the appellant to despatch to specified consumers, coal not exceeding the quantities mentioned. The consumer then requested the appellant to despatch by rail the quantity of coal allotted and gave instructions as to booking, the name of the consignee and the collection of the price. The appellant loaded the coal in railway wagons making out a "sale note" mentioning the cost per ton F.O.R. colliery, with freight to pay. So far as the appellant was concerned, property in the coal consigned passed to the allottee when the goods were loaded into the railway wagons for conveyance and thereafter all losses and any new taxes had to be borne by the consignee. The appellant claimed that it was not liable to be taxed under the Hyderabad General Sales Tax Act, 1950, on the coal supplied by it to allottees outside the taxing State on the ground (a) as regards the period April 1, 1954, to September 6, 1955, that the sales fell within the Explanation to Article 286(1)(a) of the Constitution; (b) as regards the period September 7, 1955, to September 10, 1956, that the sales were either Explanation sales or inter-State sales; (c) as regards the period September 11, 1956, to January 4, 1957, that they were inter-State sales and not taxable by the State; and (d) as regards the period January 5, 1957, to March 31, 1957, that they were inter-State sales and chargeable under the Central Sales Tax Act, 1956, alone: *Held*, (i) that as coal supplied pursuant to directions of the Coal Commissioner issued under the Colliery Control Order, 1945, was meant for consumption by the allottee, and where the allottee was outside the State it was supplied for the purpose of consumption in the State in which the allottee resided or carried on business, the sales in the first two periods were not liable to tax by virtue of the Explanation to Article 286(1)(a); *Shree Bajrang Jute Mills v. State of Andhra Pradesh* [1964] (15 S.T.C. 430) (S.C.) applied, (ii) that the sales in the second period were also inter-State sales and the State had, during that period, no power to levy sales tax on such sales; (iii) that the State had no power to tax the sales during the third and fourth periods as they were inter-State sales: coal was

transported from the colliery of the appellant to the consumers outside the taxing State as a result of a covenant or incident of the contract of sale. Decision of the Andhra Pradesh High Court in *Singareni Collieries Co. Ltd. v. State of Andhra Pradesh* [1961] (12 S.T.C. 765) and *Singareni Collieries Co. Ltd. v. Commissioner of Commercial Taxes* [1961] (12 S.T.C. 838) reversed. [Their Lordships did not consider the question of the scope of the revisional jurisdiction of the Commissioner under sec. 15 of the Hyderabad General Sales Tax Act, 1950, raised in *Singareni Collieries Co. Ltd., Hyderabad v. Commissioner of Commercial Taxes, Hyderabad* [1961] (12 S.T.C. 838). As the appellant never raised at any stage before the taxing authorities or even before the High Court the question whether the transactions were sales under the general law of sales of goods, their Lordships also assumed that the transactions were sales].—*SINGARENI COLLIERIES CO. LTD. v. COMMISSIONER OF COMMERCIAL TAXES AND OTHERS* [1966] 17 S.T.C. 197 (S.C.).

—**Sec. 3**—*Property in goods passes inside State but sale occasions movement of good from one State to another—Whether inter-State sale and exempt under State enactment—General Sales Tax Act (11 of 1125), Section 26 (Kerala).*—Transactions of sale which occasion movement of goods from one State to another and in which property in the goods passes in either State are inter-States sales within the meaning of section 3 of the Central Sales Tax Act, 1956. Therefore even if a sale is inside a State if the transaction of sale occasions the movement of goods from one State to another, it would be inter-State sale and exempt under section 26(1) of the General Sales Tax Act, 1125 (Kerala).—*MULJI RATANSHI & Co. s. STATE OF KERALA AND ANOTHER* [1961] 12 S.T.C. 657 (Ker.).

—**Sec. 3**—*F.O.R. sales—Goods booked in railway wagons at stations within State to parties outside State—Expenses of loading met by sellers—Railway freight paid by buyers—Whether sales occasioned movement of goods—Whether inter-State sales.*—The petitioner was assessed to sales tax under the General Sales Tax Act, 1125, for the period 1st April, 1956, to 1st July, 1957, on a turnover which related to sales effected to parties in Madras State. The terms of sale were F.O.R. some railway station inside the State. Pursuant to orders placed with the petitioner by the parties orally or through correspondence, goods were booked by the petitioner in railway wagons at the station mentioned. The railway receipts were obtained “self” in some cases and in the name of the non-resident buyers in other cases. All expenses up to the loading on the wagon were

met by the petitioner. Railway freight was payable at the destination by the buyers. Railway receipts marked “self” were endorsed by the petitioner to the non-resident buyers and sent to them by post along with the invoices. The petitioner contended that the sales were inter-State sales and not local sales and therefore not assessable to tax under the General Sales Tax Act, 1125: *Held*, that the connection between the F.O.R. sales at railway station inside the State for a destination outside the State and the movement that followed the delivery to the common carrier was so intimate and real, that it must be said that the movement was occasioned, caused or brought about by the sales and the sales should be considered as sales in the course of inter-State trade or commerce.—*M. SUDARSANAM IYENGAR & SONS v. THE STATE OF KERALA* [1962] 13 S.T.C. 17 (Ker.).

—**Secs. 3, 4**—*Despatch of goods from one State to another—Sale effected by transferring documents of title to goods during their movement—Applicability of section 4(2), Central Act—Appropriate State which is entitled to levy and collect tax.*—The assessee, a paddy and rice merchant in Madras State, despatched the goods to a destination in Kerala State; took the railway receipt in his own name, endorsed it in favour of a bank in Kerala State and sent the document to that bank advising it to deliver the documents to the purchaser against payment. In case the buyer to whom the goods were intended refused to honour the hundi, the assessee's agent at Kerala arranged to sell the goods to another purchaser in Kerala and advised the assessee to send the demand drafts in favour of the purchaser, who honoured the draft by payment of money to the bank, received the railway receipt and took delivery of the goods: *Held*, that the sales were inter-State sales coming under section 3(b) of the Central Sales Tax Act, 1956, and the Kerala State was the appropriate State which was entitled to levy and collect any tax due by the assessee under the Act. *Tata Iron and Steel Co. Ltd. v. S. R. Sarkar* [1960] (11 S.T.C. 655) referred to.—*A. THIRUVENGADASWAMI IYENGAR v. THE STATE OF MADRAS* [1963] 14 S.T.C. 856 (Mad.).

—**Sec. 3**—*Contract providing movement of goods from one State to another—Change of means of transport from ship to lorry during movement—Right to claim exemption under State law—Madras General Sales Tax Act (9 of 1939).*—Section 3 of the Central Sales Tax Act, 1956, codifies the pre-existing judge-made law on inter-State sales. The characteristic of an inter-State sale or purchase is the movement of goods from one State to another under a contract between the

veller and the buyer. The method of delivery adopted, the route through which the goods are despatched, and the stages involved in the course of journey of the goods are extraneous circumstances in the determination of an inter-State sale or purchase. The assessee purchased cotton from Bombay dealers under a contract which provided that the delivery should be at Koilpatti in Madras State. The goods were actually shipped by the sellers to Tuticorin Port and were cleared at that port by the sellers' agents and were loaded in lorries and delivered at the assessee's place of business at Koilpatti. The assessee claimed that the purchase was an inter-State purchase and as such was exempt from the levy of sales tax under the Madras General Sales Tax Act, 1939. The Tribunal took the view that the break of movement of goods at Tuticorin and the change in the means of transport from ship to lorry impaired the exemption claimed on the footing of inter-State transactions: *Held*, that the transactions of purchase of cotton were really inter-State in character and hence not liable to tax under the Madras General Sales Tax Act, 1939.—**LAKSHMI MILLS COMPANY LTD. v. THE STATE OF MADRAS** [1963] 14 S.T.C. 899 (Mad.).

—**Sec. 3(a)—Coal supplied to railways and other buyers outside taxing State pursuant to directions of Coal Controller under Colliery Control Order, 1945—Sales, whether inter-State sales or outside State sales—Liability to tax—C. P. and Berar Sales Tax Act, 1947—M.P. General Sales Tax Act, 1958—Constitution of India. Articles 226, 227, 286(1)(a), Explanation, 286(2).**—The assessee carried on the business of mining coal from their collieries and supplying it to consumers in and outside the State of Madhya Pradesh. They were "registered dealers" under the C.P. and Berar Sales Tax Act, 1947, and the M.P. General Sales Tax Act, 1958. At all material times, coal was a controlled commodity, the sale, distribution and movement of which were regulated and controlled by the Coal Controller and various other authorities empowered in that behalf under the Colliery Control Order, 1945. During the assessment periods falling within the years 1st January, 1953, to 31st March, 1961, the assessee despatched coal to the various Railway Administrations at various destinations outside the State of Madhya Pradesh in compliance with the directions issued by the Ministry of Production, Government of India, under clauses 8 and 9 of the Order. They also despatched coal to other buyers outside the State under the directions of the Coal Controller, Government of India, exercising powers under the Order. The taxing

authorities treated all these despatches as sales and assessed them to tax under the local enactments. The assessee preferred appeals against the orders of assessment, but these appeals were not admitted as they had not deposited one-third amount of the tax assessed. The assessee thereupon filed petitions under Articles 226 and 227 of the Constitution to quash the assessment orders and for consequential reliefs: *Held*, (1) that the cases were fully governed by the judgment of the Supreme Court in *Singareni Collieries Co. Ltd. v. The State of Andhra Pradesh* [1966] (17 S.T.C. 197) and therefore the levy of sales tax under the C.P. and Berar Sales Tax Act, 1947, and the M.P. General Sales Tax Act, 1958, on the assessee on the price of coal supplied by them to allottees outside the State of Madhya Pradesh in respect of the periods of assessment falling within the years 1st January, 1953, to 31st March, 1961, could not be sustained on any ground; (2) that as the levy of sales tax on the assessee was manifestly without jurisdiction and illegal, it would not be right to compel them to pursue the appeals they had filed for having the assessments made against them quashed. A railway owned or controlled by Government is as much a "carrier" as is a railway company engaged in the business of carrying goods of all persons. This position of a government-owned or controlled railway is in no way altered when goods belonging to Government or intended for Government are entrusted to it for transport. It could not therefore be said that coal was actually delivered to the Railway Administration at the base-station. (i) For the period from 1st January, 1953, to 6th September, 1955, [during which under the Sales Tax Laws Validation Act, 1956, the ban contained in Article 286(2), as it stood originally, did not operate], sales tax on coal delivered to allottees outside the State of Madhya Pradesh and for delivery for consumption in the outside State was not leviable by virtue of the Explanation to Article 286(1), as it stood before it was deleted by the Constitution (Sixth Amendment) Act, 1956, which came into force on 11th September, 1956. (ii) During the period from 7th September, 1955, to 10th September, 1956, the transactions were not taxable both because they were covered by the Explanation to Article 286(1) and because they were also inter-State sales. In this period the ban contained in Article 286(2) again became operative as the Sales Tax Laws Validation Act, 1956, was not extended to cover that period, and, therefore, the State had no power to levy tax on inter-State sales. (iii) During the period from 11th September, 1956, to 4th January, 1957,

after the coming into force of the Constitution (Sixth Amendment) Act, 1956, but prior to the coming into force of the Central Sales Tax Act, 1956, there was no power in the State to tax inter-State sales and therefore no sales tax could be imposed on the assessee for despatches of coal outside the State. (iv) For the period from 5th January, 1957, when the Central Sales Tax Act, 1956, came into force, and onwards, the State had no power at all to tax under the local Acts transactions of coal despatches by the assessee outside the State inasmuch as such sales fell under section 3(a) of the Central Sales Tax Act, 1956, and were therefore assessable to tax under that Act.—*THE AMALGAMATED COALFIELDS LIMITED v. THE STATE OF MADHYA PRADESH* [1966] 18 S.T.C. 251 (M.P.).

—**Sec. 3—Goods sent by V.P.P. from one State to another—Liability to tax under Central Act.**—In the case of a sale by V.P.P. the property in the goods would pass and the sale would be complete on the buyer paying the price of the goods and not before that. Therefore when goods are sent by V.P.P. from one State to another State actual sale in terms of the definition of sale in section 2(g) of the Central Sales Tax Act, 1956, takes place in that State where the parcel is received and its value is paid to the post office. In order to be an inter-State sale, the sale must satisfy the definition in section 3 of the Central Sales Tax Act, 1956, that is, there must be movement of goods in connection with the sale. The sale of goods and the movement of goods from one State to another must co-exist. The movement of goods however need not precede the sale. Therefore when goods are sent by V.P.P. from Punjab to Uttar Pradesh, both the requirements of section 3 are satisfied and the sales are liable to be taxed under the Central Sales Tax Act, 1956, and such tax is leviable by the Punjab authorities.—*PREM PAYARI AGGARWAL v. PUNJAB STATE* [1966] 18 S.T.C. 150 (Punj.).

—**Sec. 3—“Occasions the movement of goods”, meaning of—Contract of sale must contemplate movement of goods—Mere transportation of goods outside State by buyer is not sufficient—Bengal Finance (Sales Tax) Act (6 of 1941), Secs. 5(2)(a)(v), 27.**—A sale or purchase “occasions the movement of goods” within the meaning of section 3(a) of the Central Sales Tax Act, 1956, either when the contract for such sale or purchase itself contemplates or necessarily involves the movement. In other words, the movement must occur under the contract. When the movement is not under the contract but due to reasons extraneous to the obligations under the contract, it cannot be said to be a movement in the course of inter-State

trade or commerce. The assessee, a limited company with its registered office in Calcutta and manufacturing aluminium utensils, entered into a contract of sale with the Government of India under which goods were delivered in West Bengal, the price was paid in West Bengal and the property in the goods also passed to the Government in West Bengal. The goods were, however, transported from West Bengal to a place outside that State by or on behalf of the Government with which the assessee had nothing to do: *Held*, that the transactions were not in the course of inter-State trade or commerce and were subject to payment of sales tax under the Bengal Finance (Sales Tax) Act, 1941. Decision of *SINHA, J., Jeewanlal (1929) Ltd. v. Commercial Tax Officer and Others* [1965] (16 S.T.C. 478) affirmed.—*JEewanlal (1929) LTD. v. COMMERCIAL TAX OFFICER, LYONS RANGE CHARGE, AND OTHERS* [1967] 20 S.T.C. 345 (Cal.).

—**Sec. 3—Transport of goods outside State must be the result of the contract of sale.**—Where the transport of goods from the State of Madhya Pradesh to places outside the State was clearly the result of the contracts of sale entered into between the assessee and the purchasers, the sales were inter-State sales and not liable to be taxed under the M. P. General Sales Tax Act, 1958.—*COMMISSIONER OF SALES TAX, MADHYA PRADESH, INDORE v. SHRI ALLWYN COOPER, KATANGJHIRI* [1968] 21 S.T.C. 417 (M.P.).

—**Sec. 3—Sale falling under section 3(a), Central Act—Goods moved by purchaser from one State to another State after completion of sale—Whether sale inter-State sale—Delivery outside State must be pursuant to contractual obligations.**—In order to impress a sale with the character of a sale in the course of inter-State trade or commerce within the meaning of section 3 of the Central Sales Tax Act, 1956, the terms of sale should provide for delivery being effected in another State, i.e., the delivery outside the State should be pursuant to contractual obligations and not otherwise. Where the movement of the goods was not by reason of the sale but it was after the sale was completed and delivery was taken in the State by the buyer, the sale could not be said to be a sale in the course of inter-State trade or commerce. Under a contract of sale, the assessee, a dealer in manganese ore extracted from a mine in the State of Madhya Pradesh, agreed to sell certain quantity of ore lying at the Katangi railway station siding within the State of Madhya Pradesh at the stated price F.O.R. Katangi. The assessee was responsible for loading the goods in the wagons indented by the purchasers and the consignee and consignor of

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the goods from Katangi were the purchasers. The major portion of the price was to be paid on loading and the balance was to be paid after the exact weight of the ore was determined at the weigh-bridge at Gondia, a place outside the State of Madhya Pradesh. The Sales Tax Tribunal held that inasmuch as under the terms of the contract the weight of the ore was to be ascertained at the weigh-bridge at Gondia, the movement of the goods from Katangi to Gondia was occasioned by the terms of the contract of sale and therefore the transaction of sale was in the course of inter-State trade and commerce. On a reference: *Held*, that as the delivery of the ascertained goods was made at Katangi and the goods were thereafter despatched outside the State by the purchaser, the movement of the goods from one State to another State was not for giving delivery of the goods to the purchaser. The condition about payment of price on determination of the weight at Gondia weigh-bridge was for the purpose of ascertaining the exact weight and it was not a condition of sale. Therefore the sales were not sales made in the course of inter-State trade and commerce but were intra-State sales. *Commissioner of Sales Tax, M.P. v. Shri Allwyn Cooper, Katangjhiri* [1968] (21 S.T.C. 417) distinguished.—*COMMISSIONER OF SALES TAX, MADHYA PRADESH v. NATHANI BROTHERS, RAIPUR* [1968] 21 S.T.C. 465 (M.P.).

—**Secs. 3, 4, 5—Scheme of sections 3 and 5, Central Act—Tests to determine character of sales stated—Collection of sales tax or charges for loading or production of C Forms—Whether conclusive proofs—Madras General Sales Tax Act (1 of 1959).**—The scheme of sections 3 to 5 of the Central Sales Tax Act, 1956, is that inter-State sales or purchases are carved out of and separated from inside sales with reference to certain indicia but integrated with them for the purpose of situs for taxation. A sale or purchase takes place inside a State if the specified or ascertained goods are within its limits at the time the contract of sale is made or in the case of unascertained or future goods they are within the limits of that State at the time of their appropriation to the contract of sale by the seller or the buyer. Once this test is satisfied and it is established that the sale or purchase is one inside the State, it is at once a sale or purchase outside all other States but this is subject to the provisions of section 3, which defines when a sale or purchase of goods takes place in the course of inter-State trade. Two tests are applied, one of which is

that a sale or purchase takes place in the course of inter-State trade, commerce or intercourse if it occasions movement of the goods from one State to another, and the other test is that a sale or purchase takes place by transfer of documents of title, during the movement of the goods from one State to another. Once it is determined with reference to the terms of the contract that the transaction is of inter-State character, the question then will be which State is entitled to bring it to tax. That will take one back to section 4(2) relating to an inside sale. It is the State where the goods were found at the time the contract in relation to the inter-State sale or purchase was entered into, if the goods are specified or ascertained, that will be entitled to tax. In the case of unascertained or future goods, the other test of appropriation will be applicable. Therefore before a sale or purchase is taxed by a State as of an inter-State character, it must first be satisfied that the tests under section 4(2) are fulfilled and then it must be examined whether the transaction answers the requirements of section 3 (a) or (b). The petitioner was charged to tax for the assessment year 1960-61 on inter-State sales of raw skins under the Central Sales Tax Act, 1956, and on the last purchase in the State of raw skins under the Madras General Sales Tax Act, 1959. The petitioner denied its liability to tax under both the Acts and the question turned on whether delivery of raw skins to out-of-State dealers was within the State of Madras. Relying on the facts that the petitioner had collected sales tax at one per cent. on the sale transactions and charges for loading the goods on lorries the Tribunal held that the petitioner had effected inter-State sales: *Held*, that neither the collection of sales tax by the petitioner, be it on a mistaken impression or on a genuine plea that the transaction was chargeable, nor collection of charges for loading by themselves would be conclusive. The Tribunal had to ascertain what the terms of the contracts of sale were with reference to which the conclusion as to the inter-State character of the transactions could legitimately be arrived at. The Tribunal should find out whether the contract occasioned the movement of the goods in the sense that there was a stipulation in the contract that the petitioner should despatch the goods from Madras State to another State. The fact that the petitioner itself produced declarations in Form C from out-of-State buyers by itself would not justify a finding that the sales were inter-State in

character.—**HAKIM SYED ABID HUSSAIN AND SONS, MADRAS-24 v. THE GOVERNMENT OF MADRAS** [1968] 21 S.T.C. 350 (Mad.).

—**Secs. 3, 4, 5—Scope of sections 3, 4, 5—When a sale is an inter-State sale, an outside State sale or a sale in the course of import or export—Tests stated—Import of cotton through Bombay dealers under actual users' import licences—Whether purchases in the course of import—Whether exempt from sales tax—Constitution of India, Articles 226, 301, 303(1).**

—Having regard to the definitions in the Central Sales Tax Act, 1956, of “appropriate State” and “place of business” and the language employed by sections 3 and 4, a sale or purchase inside a State as defined by section 4(2) is the starting point and out of such sale or purchase is carved out and separated, a sale or purchase which occasions the movement of goods from one State to another or is effected by transfer of documents of title to the goods during their movement from one State to another and by this process such an inter-State sale or purchase is distinguished and excluded from an outside sale or purchase. At the same time, an inter-State sale or purchase while separated from an inside sale is also integrated with it for purposes of its situs and fiscal and territorial jurisdiction to tax it. Tests similar to those applicable to inter-State sale or purchase are applied by section 5 to sale or purchase taking place in the course of import into, or export out of, the territory of India, only with this difference that the movement of goods in the case of import into or export out of the territory of India terminates or commences at the customs frontiers of India. The essential tests of a sale or purchase in the course of inter-State trade, commerce and intercourse or import into or export out of the territory of India are: (1) whether there is movement of goods from one State to another or into or out of the territory of India, (2) whether such movement is occasioned by the contract of sale or purchase, and (3) alternatively whether, during such movement, the sale or purchase is effected by transfer of documents of title to the goods. The commencement and terminus of such movement should be delimited with reference to the two explanations to section 3 in respect of a sale of the type under section 3(b) or the indicia mentioned in section 5 in relation to import or export of goods. These tests will only enable to determine the character of the transaction as an inter-State one or in the course of import or export but will not help to fix its situs for jurisdiction to tax it. For that purpose, one has to turn to section 4. Once the tests under section 4(2) are answered in favour of a State, that becomes the appropriate State having jurisdiction to tax the sale or purchase

and no other State will have the power to tax the same transaction. The contract of sale or purchase is given a situs at the dealer's place of business where he sells. This is manifest from the definition of “appropriate State” and “place of business” as amended by the Central Act 31 of 1958 with effect from 1st October, 1958, and this aspect is woven into the texture of the tests under section 4(2). What is of the essence of the inter-State character of a sale or purchase under section 3(a) is that the inter-State movement of goods springs from the terms of the contract of sale or purchase or is incidental thereto. The movement of goods need not necessarily be preceded by an agreement of sale or purchase but may be part of or incidental to it, or arises out of it. The dividing line between sales or purchases under section 3(a) and those under section 3(b) is that in the former the movement of goods is under the contract of sale or purchase but in the latter the contract comes into existence after commencement and before termination of the inter-State movement of the goods. In both the classes of inter-State sales or purchases under section 3(a) and (b), what is contemplated is completed sales. But how the sales or purchases under section 3(a) or 3(b) are completed and where, are irrelevant for purposes of section 3(a) and (b). Once the character of the transaction is determined by the proper tests above-mentioned, to be inter-State, the next question will be where is its situs or which is the appropriate State to bring it to tax and that will take one to section 4(2). Where a sale or purchase occasions inter-State movement of goods, it may be comparatively easy to fix its situs. The situs of goods at the time when the contract of sale, which occasions the inter-State movement thereof, is made or at the time of appropriation of the goods, if they are unascertained or future goods, is made to the contract of sale with the assent of the seller or buyer, will be the situs of the sale or purchase and, therefore, that State in which such situs is situate will be the appropriate State entitled to bring the transaction to tax. The assent to appropriation may be prior or subsequent to it. That means the appropriation for purposes of section 4(2) need not necessarily be accompanied by the assent of the party concerned. Appropriation of unascertained or future goods may be in a variety of ways. It may be by earmarking the goods with reference to a particular contract of sale or purchase by putting them into separate packages or by some other tangible means by which the intention of such appropriation may appear. The appropriation may also be by delivery to a carrier without a possibility of

diversion of the goods for application to some other sale or purchase of goods. The appropriation must be a final one in that sense, so far as the seller or the buyer, as the case may be, who makes the appropriation, is concerned. Any other test like right of inspection or rejection, the terms like, f.o.r. or f.o.b. or c.i.f. passing of property in the goods will be irrelevant for purposes of section 4(2)(b). So too considerations based on sections 39 and 51 of the Sale of Goods Act may have no bearing in the application of section 4(2)(b). Section 9(1) so far as it is concerned with the first sale under section 3(b) has the effect of being a proviso to section 4(2) and treating such sale or purchase as sale or purchase inside the State from which the goods moved. As to second and subsequent sales or purchases of goods by transfer of documents of title to the goods during their inter-State movement, there appears to be no material in section 4(2) to fix their situs. Under the actual users' import licences obtained by the assesseees, foreign cotton was imported into India through certain Bombay dealers, who purchased the cotton from abroad, shipped the same in their own names, cleared the goods from the ports within the State of Madras, transported the same to the assesseees' mills within the State and effected deliveries there. In certain cases the documents of title were transferred in favour of the assesseees by the Bombay sellers while the goods were on the high seas and the assesseees cleared the goods at the Madras port: *Held*, that as the contracts themselves provided for the import of the foreign cotton and the terms of the actual users' licences were part of the contracts, the purchases occasioned the import of cotton and were therefore not liable to sales tax; *Held further*, that the character of the transactions would not be altered for the reasons that there was no privity of contract between the assesseees and the foreign exporter, that the terms of delivery were f.o.r. at the premises of the mills, and that the payment of the balance of the price was to be made after weighment of cotton. *K. G. Khosla & Co. (P.) Ltd. v. Deputy Commissioner of Commercial Taxes* [1966] (17 S.T.C. 473) followed. While under the Madras General Sales Tax Act the excise duty is deductible from the turnover, no such provision has been made for deduction of the excise duty from the turnover of inter-State sales or purchases under the Central Act with the result unequal burden will fall on differences in the quantum of turnover because of allowance in the one case and disallowance in another, of deduction of excise duty. That will impede the freedom of inter-State trade, commerce and

intercourse under Article 301 of the Constitution and is not saved by Article 303.—*LARSEN AND TOUBRO LTD., MADRAS-2, AND OTHERS v. JOINT COMMERCIAL TAX OFFICER, MOUNT ROAD II DIVISION, MADRAS-2, AND OTHERS* [1967] 20 S.T.C. 150 (Mad.). On appeal to the Supreme Court this decision was reversed on the point regarding the constitutional validity of section 8 of the Act.—See [1968] 22 S.T.C. 376 (S.C.).

—**Sec. 3—Contract with Government for forming embankment for dam—Government obtaining petrol and diesel oil from Madras State and supplying them to contractors at workshop compound of Government in Kerala State—Whether sale by Government to contractor inter-State sale or first sale liable to tax under Kerala Act—Kerala General Sales Tax Act (15 of 1963), Sec. 2(viii).**—The petitioner-firm entered into a contract with the Government for forming embankment for a dam. A clause in the special conditions of agreement entered into by the petitioner provided that if the petitioner required petrol or high speed diesel oil the same could be supplied from the pump installed in the departmental workshop compound and the cost of the same would be recovered in cash at certain rates. For supplying petrol and diesel oil to the contractors in the irrigation project and for other purposes the Government purchased petrol and diesel oil from the Burma Oil Company at Pollachi in the Madras State, who delivered the same in the pump installed in the workshop compound at Pothundi in the Kerala State from where the department regularly supplied petrol and diesel oil to contractors including the petitioner realising the price thereof from them. The question was whether the sales to the petitioner were inter-State sales not liable to tax under the State law or whether they were liable to tax under the State law as first sales of petrol and diesel oil: *Held*, (1) that the fact that the Government purchased petrol and diesel oil from Pollachi and transported the same to Pothundi with the idea of supplying petrol and diesel oil to contractors including the petitioner would not make the movement of goods across the border, a movement under a contract with the petitioner. The Government entered into a contract of sale with the Pollachi dealer and under that contract the movement of goods took place and therefore the inter-State sales were the sales to the Government by the Pollachi dealer and not the sales by the Government to the petitioner; (2) that the Government were a "dealer" within the definition of that word in section 2(viii) of the Kerala General Sales Tax Act, 1963, and therefore the sales by the Government to the petitioner were the first sales which would attract liability to

sales tax under the State Act.—*NECHUPADAM CONSTRUCTION ENGINEERING CONTRACTORS v. THE EXECUTIVE ENGINEER, POTHUNDI, AND ANOTHER* [1967] 20 S.T.C. 82 (Ker.).

—*Secs. 3, 4, 14, 15—Single point tax—Declared goods—Cotton yarn—Inter-State sales—Head office inside State and branches outside State—Cotton yarn delivered outside State taxed under Central Act—Same yarn brought inside State and sold locally—Whether such sale first sale liable to tax under Madras Act—Madras General Sales Tax Act (1 of 1959), Sections 3, 4, 4-A, 6, Second Schedule, item 3.*—Where the terms of a first sale are such that it may well be said to be an inside sale but it bears also the characteristics of an inter-State sale and, therefore, has been taxed under the Central Sales Tax Act, 1956, that sale being physically a first sale inside the State out of which the inter-State sale has been carved out and as the tax levied on inter-State sale must prevail, there will be no tax liability on the same sale under the Madras General Sales Tax Act, 1959, on the ground that it is an inside sale. Logically the result will be that when the goods pursuant to the inter-State sale have been delivered outside the State but brought back into the State and then sold, that sale cannot, in fact or in law, be regarded as the first sale within the meaning of the Second Schedule to the Madras General Sales Tax Act, 1959. Section 15 of the Central Sales Tax Act, 1956, ensures that in the case of declared goods, they should in all circumstances only bear a single burden at a specified stage and at the prescribed rate. Section 6 of the Madras General Sales Tax Act, 1959, will be inapplicable to sales of declared goods. The assessee was a registered dealer in several goods including yarn, which was declared to be of special importance in inter-State trade or commerce by section 14 of the Central Sales Tax Act, 1956. The assessee had its head office in the Madras City with branches in certain places in the Madras State and the States of Kerala and Andhra Pradesh. The assessee's head office placed orders for yarn on Madurai Mills and the mills supplied yarn either to the assessee's head office or to its branches in accordance with its instructions. In respect of supplies made outside the State of Madras, the goods were put on rail by the mills pursuant to the orders placed by the assessee and the price was paid in the State of Madras. Where deliveries were made to the assessee inside the State, the seller collected the tax due under the Madras General Sales Tax Act, 1959, with reference to item 3 of the Second Schedule to the Act. But in respect of deliveries made to the assessee's branches outside the State, the seller

collected tax under section 3 of the Central Sales Tax Act, 1956. During the year 1965-66 the assessee brought over to the Madras State certain quantities of yarn from the stock so purchased at its branches in the States of Andhra Pradesh and Kerala and already charged to tax under the Central Sales Tax Act, 1956, and sold the same to local dealers. The question was whether such local sales were again liable to tax under the Madras General Sales Tax Act, 1959, as first sales in the State of Madras: *Held*, that as the inter-State sale was also factually the inside sale, which occasioned the movement of the goods, that was the first sale in the State, which attracted tax under the Central Sales Tax Act, 1956, and the goods having thus suffered tax, there was no subsequent liability on them to a further single point tax under the Madras General Sales Tax Act, 1959.—*MADURA SOUTH INDIA CORPORATION PRIVATE LIMITED v. THE JOINT COMMERCIAL TAX OFFICER, HARBOUR DIVISION III, MADRAS* [1968] 21 S.T.C. 163 (Mad.).

—*Secs. 3, 4, 5—Cotton—Last dealer who buys in the State—Scope of Secs. 3, 4 and 5, Central Act—“Total turnover” in Rule 6, Andhra Pradesh Act—Meaning of—Whether includes sales and purchases—Cotton and cotton-seeds—Whether different commodities—Powers of Tribunal—Scope of section 21(4)(a)(iii)—Andhra Pradesh General Sales Tax Act (6 of 1957), Secs. 2(n), 7, 21(4)(a)(iii), Sch. IV, Item 5—Andhra Pradesh General Sales Tax Rules, 1957, Rule 6.*—Section 4 of the Central Sales Tax Act, 1956, is concerned only with sales outside the State and not with export or import sales. It is not within the competence of the States to levy tax on sales occurring in the course of import or export. If a sale is in the course of import or export the situs of the sale is wholly irrelevant. The assessee entered into contracts for the sale of cotton to a mill in Pondicherry. After receipt of the purchase notes, the assessee bought cotton in the open market, ginned it, pressed it into bales and earmarked the bales to Pondicherry. Thereafter weighment statements were prepared, insurance was effected in the mill's name and the goods were sent in a lorry which were taken delivery of in Pondicherry. After despatch of the goods 90 per cent. of the value was sent to the assessee and the balance was paid after verification. On the question whether the assessee was the last dealer who bought cotton inside the State: *Held*, that Explanation II to section 2(n) of the Andhra Pradesh General Sales Tax Act, 1957, and section 4 of the Central Sales Tax Act, 1956, were of no avail to the assessee and that a combined reading of section 7 and item 5

of Schedule IV of the Andhra Pradesh General Sales Tax Act, 1957, would only lead to the conclusion that the last purchaser who was affected by item 5 was the assessee as he purchased the goods immediately before they were exported. Cotton and cotton-seeds are two different and distinct commodities and therefore taxing the sale of cotton-seeds separated from cotton does not amount to double taxation. The total turnover of a dealer under rule 6 of the Andhra Pradesh General Sales Tax Rules, 1957, consists of all the transactions whether they be subjected to tax under the Central Sales Tax Act, 1956, or exempted from tax. The expression "total turnover" is of wide import and includes both sales and purchases. The Commercial Tax Officer without deciding whether the turnover relating to a sale to a dealer outside the State was subjected to tax under the Central Sales Tax Act, 1956, or not gave relief to the assessee with the rider "subject to verification of claim and payment of tax by the buyer". In an appeal filed by the assessee, the department made a request to the Appellate Tribunal to disallow the claim of the assessee. The Tribunal instead of enhancing the assessment remanded the case to the Commercial Tax Officer to investigate into the matter on the material available to him: *Held*, that section 21(4)(a)(iii) clothes the Tribunal with wide powers and therefore no exception could be taken to the order passed by the Tribunal.—*GUDUTHUR THIMMAPPA & SON v. THE STATE OF ANDHRA PRADESH* [1964] 15 S.T.C. 299 (A.P.).

—*Secs. 3, 5—Local purchase of goods after receipt of orders from buyers in other States or outside India—Purchase, whether in the course of inter-State trade or in the course of export.*—Where the petitioners purchased certain goods from the local market after receipt of orders for such goods from buyers in other States or outside India, such purchases would not come under the Central Sales Tax Act, 1956, inasmuch as the purchases did not occasion the movement of the goods from the Kerala State. The fact that the purchases were after securing the orders and before the despatch of the goods is not by itself sufficient to forge the casual connection between the purchases and the movement which is essential for earning the exemption provided.—*GANDHI SONS v. SALES TAX OFFICER, SPECIAL CIRCLE, MATTANCHERRY, AND OTHERS* [1963] 14 S.T.C. 304 (Ker.).

—*Sec. 3—Groundnut oil—Registered manufacturer—Sale of oil—Sales falling under section 3(b), Central Sales Tax Act, 1956—Right to claim rebate—Scope of Rule 25, Andhra Pradesh General Sales Tax Rules, 1957, and Rule 18(2), Madras General*

Sales Tax (Turnover and Assessment) Rules, 1939.—Where the assessee was a registered manufacturer of groundnut oil but the transactions relating to sale of groundnut oil could not be brought to tax for the reason that they fell within the purview of section 3 of the Central Sales Tax Act, 1956, and were therefore to be excluded from the turnover: *Held*, that as the transactions were not subjected to tax, there would be no occasion to claim a rebate under rule 5(1)(k) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, and the department was not under an obligation to levy a tax on the sales so that the assessee could claim the rebate. The purpose of enacting rule 25 of the Andhra Pradesh General Sales Tax Rules, 1957, corresponding to rule 18(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, is to avoid double taxation and not for the purpose of enabling the assessee to make a profit out of the transaction. Where the assessee despatched goods by rail, obtained railway receipts in his own name and when the goods started on their journey to another State endorsed the railway receipts in favour of the buyer after receiving the sale price from him: *Held*, that as the transfer was effected during the movement of the goods, the sale fell within the purview of section 3(b) of the Central Sales Tax Act, 1956, and could not be taxed by the department.—*VEMULA SESHIAH AND GONGADI RAMAPPA v. THE STATE OF ANDHRA PRADESH* [1963] 14 S.T.C. 730 (A.P.).

—*Secs. 4(2), 6—Sale of motor vehicle chassis—Invoice prior to 1st July, 1957—Delivery by manufacturer's drivers to out-of-State buyers—Insurance in manufacturer's name—When sale is completed—Applicability of section 4(2)(b).*—The assessee's turnover of inter-State sales of motor vehicle chassis was not originally brought to tax on the view that they took place prior to 1st July, 1957, on which date section 6 of the Central Sales Tax Act, 1956, by a notification in that regard, was brought into force. The Board of Revenue disagreed with that view and was of opinion that the inter-State sales, though invoiced or billed prior to 1st July, 1957, were actually completed only thereafter by delivery to the out-of-State dealers. The Board laid great emphasis on the fact that it was the assessee's drivers that drove out the vehicles outside the borders of the State, that the vehicles were also insured in the name of the assessee and that therefore the right of disposal of the vehicles vested in the assessee up to the time of delivery to the buyers: *Held*, that, merely on those facts a satisfactory decision could not be arrived at as to when the inter-State sale was completed and that the Board should dispose of

the appeal afresh after examining all the relative documents including the orders and agreements and considering the applicability of sec. 4(2)(b).—*ASHOK LEYLAND LIMITED v. THE STATE OF MADRAS* [1967] 20 S.T.C. 450 (Mad.).

—*Sec. 5—Sale of tea to local agents of foreign buyers and subsequent export—Whether exempt under Article 286(1)(b) or section 5, Central Sales Tax Act, 1956.*—Purchase of tea by local agents of foreign buyers with a view to export the tea to their principals abroad and subsequent export of the tea from India is not sufficient to secure the exemption under Article 286(1)(b) of the Constitution or section 5 of the Central Sales Tax Act, 1956. In order to attract the exemption there must be a casual connection between the sale and the export, a connection which is intimate and real. The sale must inextricably be bound up with the export and form an integral part thereof. One must be able to say that without the export the sale is not effectuated, or, in other words, that it was the sale which occasioned or produced or caused the export.—*BEN GORM NILGIRI PLANTATIONS CO. AND OTHERS v. THE SALES TAX OFFICER, SPECIAL CIRCLE, ERNAKULAM, AND OTHERS* [1962] 13 S.T.C. 309 (Ker.) affirmed by the Supreme Court in [1964] 15 S.T.C. 753. See below:—

—*Held* by GAJENDRAGADKAR, C.J., SHAH and SIKRI, JJ. (WANCHOO and RAJAGOPALA AYYANGAR, JJ., dissenting).—A sale in the course of export predicates a connection between the sale and export, the two activities being so integrated that the connection between the two cannot be voluntarily interrupted, without a breach of the contract or the compulsion arising from the nature of the transaction. In this sense to constitute a sale in the course of export, there must be an intention on the part of both the buyer and the seller to export, there must be an obligation to export, and there must be an actual export. The obligation may arise by reason of statute, contract between the parties, or from mutual understanding or agreement between them, or even from the nature of the transaction which links the sale to export. A transaction of sale which is a preliminary to export of the commodity sold may be regarded as a sale *for* export, but is not necessarily to be regarded as one *in the course of* export, unless the sale occasions export. And to occasion export there must exist such a bond between the contract of sale and the actual exportation, that each link is inextricably connected with the one immediately preceding it. Without such a bond, a transaction of sale cannot be called a sale in the course of export of goods out of the territory of India. There are

a variety of transactions in which the sale of a commodity is followed by export thereof. At one end are transactions in which there is a sale of goods in India and the purchaser immediate or remote exports the goods out of India for foreign consumption. For instance, the foreign purchaser either by himself or through his agent purchases goods within the territory of India and exports the goods and even if the seller has the knowledge that the goods are intended by the purchaser to be exported, such a transaction is not in the course of export for the seller does not export the goods, and it is not his concern as to how the purchaser deals with the goods. Such a transaction without more cannot be regarded as one in the course of export because etymologically “in the course of export” contemplates an integral relation or bond between the sale and the export. At the other end is a transaction under a contract of sale with a foreign buyer under which the goods may under the contract be delivered by the seller to a common carrier for transporting them to the purchaser. Such a sale would indisputably be one for export, whether the contract and delivery to the common carrier are effected directly or through agents. But in between lie a variety of transactions in which the question whether the sale is one for export or is one in the course of export *i.e.*, it is a transaction which has occasioned the export, may have to be determined on a correct appraisal of all the facts. No single test can be laid as decisive for determining that question. Each case must depend upon its facts. But that is not to say that the distinction between transactions which may be called sale *for* export and sales *in the course of* export is not real. In general where the sale is effected by the seller, and he is not connected with the export which actually takes place, it is a sale *for* export. Where the export is the result of sale, the export being inextricably linked up with the sale so that the bond cannot be dissociated without a breach of the obligation arising by statute, contract or mutual understanding between the parties arising from the nature of the transaction, the sale is in the course of export. The appellants, manufacturers of tea, applied for and obtained from the Tea Board allotment of export quota rights on payment of the necessary licence fee. The manufactured tea in chests was then sent to S & Co., who warehoused the chests at Willingdon Island. Chests of tea were then sold by public auction through brokers at Fort Cochin. With the chests of tea for which export quota rights were obtained, export quota rights were sold by the auctioneer. At the auction sale, bids for tea chests with export quota rights were given by the

agents or intermediaries in Cochin of foreign buyers. The chests were delivered at the warehouses by S & Co. to the purchasers whose bids were accepted. The agents or intermediaries of the foreign buyers then obtained licences from the Central Government for export of the tea chests under the export quota rights vested in them under the purchases made at the auction sales. The chests of tea were then actually exported out of the territory of India. The question was whether the sale by auction to the agents or intermediaries of the foreign buyers was a sale in the course of export and was exempt from sales tax: *Held*, that the transaction of sale did not occasion the export of the goods, even though the appellants knew that the buyers in offering the bids for chests of tea and export quotas were acting on behalf of foreign principals and that the buyers intended to export the goods. There was between the sale and the export no such bond as would justify the inference that the sale and the export formed parts of a single transaction or that the sale and export were integrally connected. The appellants were not concerned with the actual exportation of the goods and the sales were intended to be complete without the export, and as such it could not be said that the sales occasioned the export. The sales were therefore for export, and not in the course of export and were therefore not exempt. **WANCHOO and RAJAGOPALA AYYANGAR, JJ.**—A sale under a contract or understanding between the buyer and seller by which the latter was to export the goods bought was a sale which occasioned the export and on the facts established this condition was satisfied. Decision of the High Court in *Ben Gorm Nilgiri Plantations Co. and Others v. The Sales Tax Officer, Special Circle, Ernakulam and Others* [1962] (13 S.T.C. 309) affirmed.—**BEN GORM NILGIRI PLANTATIONS CO., COONOR v. THE SALES TAX OFFICER, SPECIAL CIRCLE, ERNAKULAM** [1964] 15 S.T.C. 753 (S.C.).

—**Sec. 5—Customs frontier—Meaning of—Sale of goods after ship carrying goods crossed territorial water belt—Whether a sale in the course of import—Constitution of India, Article 286(1)(b).**—The “customs frontier” as elucidated by the Supreme Court in dealing with Article 286(1)(b) of the Constitution would not mean any geographical features like land or coast or limits of territorial waters, but would only mean the operation of the machinery of the customs department consisting of levy and collection of duty and clearance of the goods. There is no reason to construe the expression “customs frontier” occurring in section 5 of the Central Sales Tax Act, 1956, in any way different from the sense in which it was

understood prior to its enactment. The object and purpose of the President's notification in including six nautical miles of the sea belt as part of the Union or State territory are entirely foreign to the scope and determination of the taxability or otherwise of goods to sales tax enacted by the State Legislature. Therefore a sale by transfer of documents of title relating to goods on board a ship at a point of time after the ship had navigated into the six mile limit is a sale in the course of import within the meaning of the expression in Article 286(1)(b) of the Constitution or in section 5 of the Central Sales Tax Act, 1956. The Supreme Court in *Wadeyar v. Daulatram Rameshwarlal* [1960] (11 S.T.C. 757) far from going back upon their previous decisions in *State of Travancore-Cochin v. S. V. C. Factory* [1953] (4 S.T.C. 205) and *Gokal & Co. (Private) Ltd. v. Assistant Collector of Sales Tax* [1960] (11 S.T.C. 186) really affirmed the principles laid down therein. *Burmah-Shell Co., Ltd. v. State of Anāhra Pradesh* [1960] (11 S.T.C. 533) dissented from.—**DEPUTY COMMISSIONER OF COMMERCIAL TAXES, MADRAS DIVISION v. DEVAR AND CO. AND OTHERS** [1963] 14 S.T.C. 904 (Mad.).

—**Sec. 5—Sale in the course of import—“Occasions the import”, meaning of—Contract with Government of India for import and supply of steel to Integral Coach Factory, Madras—Contract providing movement of goods from manufacturers outside India—Whether sale exempt under section 5 or 4—Scope of sections 4 and 5—Appropriation in section 4(2)(b)—Meaning of.**—**RAMAKRISHNAN and RAMAMURTI, JJ.**—Section 4 of the Central Sales Tax Act, 1956, has to be treated as subject to section 5 and where section 5 applies, there is no more need to decide whether section 4 will apply. A sale or purchase can be said to have occasioned the import within the meaning of section 5(2) if there is a covenant or condition in the contract providing for the movement of the goods from the foreign territory into the territory of India and in such a case the passing of property in the goods is not regarded as a decisive factor. Under the terms of a contract entered into between the petitioner-company and the Iron and Steel Controller, Calcutta, the petitioner agreed to import and supply certain tons of steel material to the Integral Coach Factory, Madras. The contract, *inter alia*, provided that the petitioner would get the goods manufactured in U. K. according to the specifications mentioned in the Schedule, that the goods, after such manufacture, would be shipped between specified dates to the Madras Port and that before shipment the nominee of the buyer, namely, D.G., I.S.D., London, should inspect the goods to satisfy himself that the materials were

in conformity with the specifications. The petitioner had to submit to the Iron and Steel Controller advance information of all expected shipments of steel and should deliver the materials to the Deputy Controller of Stores, Integral Coach Factory, as soon as they were received in the jetty. On completion of delivery of each consignment the petitioner should submit his 100 per cent. bill at full landed cost based on the C.I.F. price to the Deputy Controller of Stores: *Held*, by the Court, that the sale was a sale in the course of import within the meaning of sec. 5(2) of the Central Sales Tax Act, 1956, because the movement of the goods from the U. K. to the Madras Port was the result of a covenant as well as of an incident in the contract of sale and therefore the sale was not taxable; *Held further* by RAMAMURTI, J., that the sale was outside the State of Madras inasmuch as the appropriation of the specific goods towards the contract had taken place in London. RAMAMURTI, J.—The appropriation referred to in section 4(2) (b) signifies and connotes the ear-marking and setting apart of the goods as specific goods to be delivered under the contract of sale and does not signify an appropriation carrying with it the idea of passing of property. RAMAKRISHNAN, J.—The question as to where the appropriation of goods to the contract of sale took place in an unconditional manner under section 23 of the Sale of Goods Act, 1930, has to be determined in the light of the terms of the contract in each case, and it will require careful investigation to find out what exactly the contract stipulated in the matter of appropriation.—BENGAL CORPORATION PRIVATE LTD. v. THE STATE OF MADRAS [1965] 16 S.T.C. 62 (Mad.).

—*Sec. 5—Sale in the course of export—Meaning of—Sale of iron ore to Japan through the State Trading Corporation—Whether a sale in the course of export and exempt from sales tax—Constitution of India, Art. 286(1)(b).*—The petitioner was engaged in the export of iron ore to Japan, but by reason of control on the commodity, the export had to be made through the State Trading Corporation, which in turn, for its facility, had appointed a broker. Under the agreement if the goods were rejected either at the port or by the foreign buyers the loss would fall on the petitioner and at no point of time the property in the goods passed to the broker or to the State Trading Corporation. On the question whether the sale was liable to sales tax: *Held*, that the sale was a sale in the course of export and therefore exempt under the provisions of Article 286 of the Constitution and section 5 of the Central Sales Tax Act, 1956. The question whether a

sale is in the course of export or not is not a question of fact. The question what is the nature of the transaction on the fact is a pure question of law.—NEW RAJASTHAN MINERAL SYNDICATE v. THE STATE OF PUNJAB AND OTHERS [1965] 16 S.T.C. 534 (Punj.).

—*Sec. 5(2)—Sale in the course of import—Sale whether should precede import—Contract for manufacture abroad and supply in India—Sale in India, whether in the course of import—“Occasions the movement of goods”, meaning of—Supreme Court—Appeal by special leave—Two assessment orders—Two revisions each filed by assessee and department—Common judgment of High Court—Two appeals to Supreme Court—Whether sufficient.*—The assessee entered into a contract with the Director-General of Supplies and Disposals, New Delhi, for the supply of axle-box bodies. The goods were to be manufactured in Belgium according to specifications and the D.G.I.S.D., London, or his representative had to inspect the goods at the works of the manufacturers and issue an inspection certificate. Another inspection was provided for at Madras. The assessee was entitled to be paid 90 per cent. after inspection and delivery of the stores to the consignee and the balance of 10 per cent. was payable on final acceptance by the consignee. In the case of deliveries on f.o.r. basis the assessee was entitled to 90 per cent. payment after inspection on proof of despatch and balance of 10 per cent. after receipt of stores by the consignee in good condition. The assessee was entirely responsible for the execution of the contract and for the safe arrival of the goods at the destination. The contract provided that notwithstanding any approval or acceptance given by an Inspector, the consignee was entitled to reject the goods, if it was found that the goods were not in conformity with the terms and conditions of the contract in all respects. The manufacturers consigned the goods to the assessee by ship under bills of lading and the goods were cleared at the Madras Harbour by the assessee's clearing agents and despatched for delivery to the Southern Railway in Madras and Mysore. The question was whether the sales by the assessee to the Government departments were in the course of import and exempt from taxation under section 5(2) of the Central Sales Tax Act, 1956: *Held*, (i) that the expression “occasions the movement of goods” occurring in section 3(a) and section 5(2) had the same meaning; (ii) that before a sale could be said to have occasioned the import it was not necessary that the sale should have preceded the import; (iii) that the movement of goods from Belgium into India was incidental to the contract that they would be

manufactured in Belgium, inspected there and imported into India for the consignee, and was in pursuance of the conditions of the contract between the assessee and the Director-General of Supplies. There was no possibility of the goods being diverted by the assessee for any other purpose and, therefore, the sales took place in the course of import of goods within section 5(2) of the Act, and exempt from taxation. Principle in *Tata Iron and Steel Co. Ltd. v. S. R. Sarkar* [1960] (11 S.T.C. 655) applied. Where in respect of two assessment orders two revisions were filed by the assessee and two by the State and they were disposed of by the High Court by one judgment: *Held*, that the assessee was right in filing only two appeals to the Supreme Court. Decision of the Madras High Court reversed.—K. G. KHOSLA AND CO. (P.) LTD. v. DEPUTY COMMISSIONER OF COMMERCIAL TAXES, MADRAS DIVISION, MADRAS [1966] 17 S.T.C. 473 (S.C.).

—**Sec. 5(1)—Sale in the course of export—Sales to Nepal dealers who take delivery of goods in India—Whether sales exempt under Article 286(1)(b), Constitution.**—What is of importance to make a sale one in the course of export within the meaning of Article 286(1)(b) of the Constitution or section 5(1) of the Central Sales Tax Act, 1956, is that there must be an obligation to export—the obligation may be of the seller or of the buyer—and it may arise by reason of statute, contract between the parties or from mutual understanding or agreement between them or even from the nature of the transaction which linked the sale to export. All the three elements, namely (i) common intention of the parties to the transaction to export, (ii) actual exportation and (iii) obligation to export, must exist and be found to bring the case within the exemption of Article 286(1)(b). The assessee, registered as a dealer under the Bihar Sales Tax Act, 1947, carried on the business of selling goods at Jainagar in Bihar. The assessee sold goods to dealers in Nepal and the *modus operandi* of the sales was as follows:—The Nepal purchaser came to the assessee's premises, bought the goods, paid cash, took delivery of the goods, carried the goods in his own bullock-cart, crossed the Nepal boundary, and paid the customs duty producing before the customs official the cash memo issued by the assessee. The purchaser took the customs receipt, in which was noted both the names of the assessee and the purchaser, and this receipt was sent by the purchaser to the assessee. The assessee claimed that the sales took place in the course of export of the goods outside the territory of India and were therefore exempt from sales tax under section 5(1) of the Central Sales

Tax Act, 1956: *Held*, that as there was no obligation to export either under the contract or in pursuance of a mutual understanding or agreement between the parties, the sales to Nepal purchasers could not be treated as sales in the course of export of goods outside the territory of India and were therefore not exempt from sales tax. [The Court observed that the law had been correctly laid down in *Dulichand Hardwari Mull v. State of Bihar* [1963] (A.I.R. 1963 Pat. 359; [1968] 22 S.T.C. 255) on the facts found, namely, "that the goods were actually exported to Nepal in pursuance of the contract of sale between the parties"; and that it was not concerned with the further question whether such a finding was justified from the primary facts found by the Sales Tax Authorities reproduced in that judgment].—SHANKERJEE RAUT GOPALJI RAUT v. STATE OF BIHAR [1968] 22 S.T.C. 241 (Pat.).

—**Sec. 6(2), proviso—Second sales by transfer of documents during movement of goods—Right to claim exemption on production of E-I Forms—Whether production of C Forms necessary—Validity of Rule 9-B (5) and (2), Central Sales Tax (Madras) Rules, 1957—Central Sales Tax (Registration and Turnover) Rules, 1957, Sec. 13(4), Forms C, E-I.**—In order to get the exemption under section 6(2) of the Central Sales Tax Act, 1956, in respect of second inter-State sales to a registered dealer by transfer of documents of title during movement of goods, the only condition required by the proviso to section 6(2) is that the assessee should produce certificates in Form E-I obtained from the registered dealer from whom the goods were purchased. There is no indication either in section 6(2) or the proviso thereto that "C" Forms as such should be obtained and produced. There is also nothing in section 13(4) authorising the State Government to frame a rule like sub-rule (5) of rule 9-B of the Central Sales Tax (Madras) Rules, 1957, and therefore sub-rule (5) of rule 9-B is invalid. Sub-rule (2) of rule 9-B cannot, in any sense, be read as mandatory. It should be understood only as one mode of proof of the fact that the second sales are to registered dealers. But the revenue cannot insist that the dealer is bound to produce declarations in Form "C" in order to qualify himself for exemption. All that the revenue can require the dealer to do is to prove that the second sales were to registered dealers and the proof may take any form, not necessarily declarations in Form "C".—THE STATE OF MADRAS v. P. SUBBIAH PILLAI [1967] 20 S.T.C. 263 (Mad.).

—**Sec. 6(2), proviso—Second sales—Filing of E-I Forms—No power to fix time-limit by rules—Forms filed within reasonable time—Whether should**

be received—*Central Sales Tax (Madras) Rules, 1957, Rule 5(1)*.—The word “manner” in the proviso to section 6(2) of the Central Sales Tax Act, 1956, will not include a power to make rules prescribing a time-limit for filing E-I Forms. Therefore the time-limit prescribed by rule 5(1) of the Central Sales Tax (Madras) Rules, 1957, for filing E-I Forms has to be ignored; but they should be filed within a reasonable time. Where an assessee in response to a show cause notice from the department appears and makes a reasonable request for time to file E-I Forms, but all the same, time is unjustifiably refused, it is competent for, and is within the jurisdiction of, the Appellate Assistant Commissioner in exercise of his appellate powers to take that fact into account and himself extend the time for production of such forms, or where they were filed before him, to receive them, examine the same and if they were found in order, to give the relief to which the assessee is eligible under the law.—*P. SUBBIAH PILLAI & CO., MADURAI v. THE STATE OF MADRAS* [1967] 20 S.T.C. 266 (Mad.).

—*Secs. 6(2), 9(1), (3)*—*Purchase of exempted goods from out of State dealers without obtaining E-I Form*—*Subsequent sale during movement of goods by rail by transferring documents of title to registered dealers in Madras*—*Production of declaration in C Form issued by authorities in Madras State*—*State which can tax the sale*—*Appeal against assessment under Central Act*—*Enhancement of turnover*—*Legality*—*Madras General Sales Tax Act (1 of 1959), Sec. 31(3)*.—The assessee purchased goods from registered dealers in Rajasthan, where the goods were exempt from tax; but the Rajasthan dealers declined to give to the assessee certificate in Form E-I of the Central Sales Tax (Registration and Turnover) Rules, 1957. The goods were despatched from Rajasthan by rail and during their movement, the assessee transferred the documents of title thereto to certain purchasers in Madras State, who were also registered dealers. The assessee produced the declarations in C Form obtained from the authorities in the Madras State. It was contended for the assessee that it was only the Rajasthan State from which the goods moved that could tax the subsequent sale effected during the movement of goods on rail: *Held*, that the entire turnover would fall within the ambit of the proviso to section 9(1) of the Central Sales Tax Act, 1956, and the Madras State would be entitled to tax the subsequent sale. As the certificate in Form E-I was not produced, the proviso to section 6(2) would come into play. The sale therefore did not fall within the ambit of section 6(2) and attracted the proviso to section 9(1). The State which therefore could tax the sale was the State from

which the assessee who effected the sale obtained declaration in Form C. Where the Legislature makes a law adopting by reference certain provisions contained in a different enactment, no intention could be imputed to the Legislature that any amendment to that enactment should also become a part of the law which the Legislature has adopted originally by reference. This is on the principle that a Legislature cannot abdicate its functions. As there was no power under the Madras General Sales Tax Act, 1939, to enhance a turnover in an appeal by an assessee, an enhancement cannot be made in proceedings under section 9(3) of the Central Sales Tax Act, 1956, merely because of section 31(3) of the Madras General Sales Tax Act, 1959. *Haji J. A. Kareem Sait v. Deputy Commercial Tax Officer* [1966] (18 S.T.C. 370) and *D. H. Shah & Co. v. The State of Madras* [1967] (20 S.T.C. 146) referred to.—*K. A. RAMUDU CHETTIAR AND COMPANY v. THE STATE OF MADRAS* [1968] 22 S.T.C. 283 (Mad.).

—*Secs. 6(2), 9(1)*—*Purchase and sale during movement of goods from one State to another State*—*First seller in Mysore State, second seller in Andhra Pradesh State and third seller in Rajasthan State*—*Failure to obtain E-I Form and C Form by second seller*—*Appropriate State authorised to collect tax*—*“In connection with the purchase of goods”*—*Meaning of*.—The first sellers of certain consignments of *bajra* and *jawari* were in Mysore State. They booked the consignments to places outside the Mysore State and when the goods were in movement, they sold the railway receipts to the assessee in Andhra Pradesh, who in turn sold them to buyers in Rajasthan and West Bengal. The assessee, who were registered dealers under the Central Sales Tax Act, 1956, in the State of Andhra Pradesh, failed to obtain declarations in C Form for these transactions and they were assessed by the State of Andhra Pradesh to a tax of 7 per cent. under the Central Act. The Sales Tax Appellate Tribunal held that if any form prescribed had been obtained by the assessee, it would be from the dealers in the States of West Bengal and Rajasthan and therefore in the light of the proviso to section 9(1), those States alone were authorized to levy and collect the tax. The assessee admitted that the sales were not covered by section 6(2) of the Act, and that the State of Andhra Pradesh was the appropriate State from which the forms prescribed for purposes of section 8(4)(a) were to be obtained for these transactions: *Held*, that the assessee could obtain the C Forms from the West Bengal and Rajasthan buyers only in connection with their sales and that, in connection with their purchases, they could obtain the C Forms only from the State of

Andhra Pradesh and not from the State of West Bengal or Rajasthan. Therefore under the proviso to section 9(1) it was the State of Andhra Pradesh that was the appropriate State that could levy and collect the tax from the assessee in respect of these transactions. *K. A. Ramudu Chettiar and Company v. State of Madras* [1967] (22 S.T.C. 283; (1967) 2 M.L.J. 315) followed. *State of Mysore v. Yaddalam Lakshminarasimhiah Setty and Sons* [1965] (16 S.T.C. 231) referred to.—*STATE OF ANDHRA PRADESH v. G. MURALIDHAR & Co.* [1968] 22 S.T.C. 285 (A.P.).

—*Secs. 6(2), 9(1)*—*Purchase of exempted goods from out of State dealer without furnishing C Forms and without obtaining E-I Forms*—*Subsequent sale to Madras buyer during movement of goods by rail by transfer of documents of title*—*Right of Madras State to tax such sale*.—Goods initially moved out from the State of Gujarat to the assessee under an inter-State sale within the purview of section 3(a) of the Central Sales Tax Act, 1956, and when they were in transit, the assessee transferred the documents of title to a buyer in the State of Madras. The sales of the particular goods were exempt from tax in the State of Gujarat and neither the assessee issued the declarations in Form C to the Gujarat seller nor the latter certified to the former in Form E-I. The question was whether the subsequent sales effected by the assessee, being outside the purview of section 6(2), could be taxed by the State of Madras under the proviso to section 9(1) in the assessment year 1960-61: *Held*, (1) that when the proviso to section 9(1) speaks of obtaining the form prescribed for the purposes of section 8(4)(a) in connection with the purchase of such goods it means that the C Form certificate has been obtained in respect of a particular first sale of the goods. The concluding phraseology in the proviso is not used in the abstract; but since the jurisdiction is to be localised with reference to particular transactions, the form spoken of must necessarily relate to such transactions. Therefore for the application of the proviso to section 9(1) not only the C Form should be obtained from the taxing State but it should also be in connection with the purchase of the goods involved in the second sale; (2) that since the assessee had not issued the declarations in Form C to the Gujarat seller, the proviso to section 9 did not vest in the State of Madras the jurisdiction to tax the second sale.—*STATE OF MADRAS v. K. NANDAGOPAL CHETTY* [1968] 22 S.T.C. 290 (Mad.).

—*Secs. 6, 15*—*Whether all provisions should be brought into force simultaneously*—*Notification bringing section 6 into force*—*Whether invalid so far as it related to declared goods until section 15 was brought*

into force.—The assessee, a dealer in hides and skins, was assessed to sales tax for the assessment year 1957-58 under the Central Sales Tax Act, 1956. The assessee contended that sections 6, 14 and 15 formed a composite group and that having regard to the scheme and object of the Act, the imposition of the tax under section 6 was not possible unless the restrictions under sections 14 and 15 were brought into force at the same time. Therefore the notification issued by the Central Government bringing section 6 into force from 1st July, 1957, was invalid in so far as it related to declared goods until 1st October, 1958, when section 15 was also brought into force: *Held*, that the Constitution has conferred three different and distinct powers on the Parliament and the Central Sales Tax Act is a composite piece of legislation embracing all those powers. There is no provision in the Constitution which imposes a condition that these powers should be exercised simultaneously and it is open to the Parliament to legislate in respect of these matters on different dates. If Parliament postponed the conferment of the privilege contemplated by section 15 to a later date, it was undoubtedly within its powers in doing so and therefore the notification under section 6 was not invalid.—*K. MOHAMED ELIAS AND CO. AND OTHERS v. THE STATE OF MADRAS* [1962] 13 S.T.C. 425 (Mad.).

—*Secs. 6, 15*—The notification issued by the Central Government bringing into force section 6 of the Central Sales Tax Act, 1956, was not invalid on the ground that the provisions of sections 14 and 15 were not brought into force simultaneously.—*M. ABBAS AND CO. v. THE STATE OF MADRAS* [1962] 13 S.T.C. 433 (Mad.).

—*Secs. 6, 8*—*Unregistered dealer*—*Scope of Sections 6, 8(1) and 8(2), Central Sales Tax Act, 1956*—*Inter-State sales to unregistered dealers*—*Whether liable to be taxed under section 8(2)*.—All transactions which are subject to tax under section 6 of the Central Sales Tax Act, 1956, are divided into two categories by section 8. A part of those transactions come within section 8(1) and the remaining part falls within section 8(2) and no part is exempt from tax. Transactions not falling within section 8(1) have to be considered as falling within section 8(2). If by non-compliance with the requirements of section 8(4) any transaction is excluded from section 8(1) that transaction falls within section 8(2). Therefore inter-State sales to unregistered dealers fall within section 8(2). *The State of Mysore v. Yaddalam Lakshminarasimhiah Setty & Sons* [1965] (16 S.T.C. 231) referred to.—*C. B. BASAPPA v. STATE OF MYSORE* [1966] 17 S.T.C. 5 (Mys.).

—**Sec. 7(3)—Levy of tax—Payment of tax at compounded rates—Sale of goods purchased by dealers registered under Central Act—Rate of tax—Right to claim taxation at compounded rates—Madras General Sales Tax Act (1 of 1959), Secs. 3, 5, 7.**—The pattern of taxation which sections 3, 5 and 7 of the Madras General Sales Tax Act, 1959, lay down does not confer a right upon a dealer registered under section 7(3) of the Central Sales Tax Act, 1956, to the benefit of taxation at the compounded rates under section 7 of the Madras Act. Therefore a dealer registered under the Central Act will be liable to tax at the rate specified in section 5 of the Madras Act, on his sales of goods with reference to the purchase of which he has furnished a declaration under section 8(4) of the Central Act, even if his total turnover is less than the minimum limit for liability to tax prescribed in section 3(1) of the Madras Act.—**R. KALIAPPAN v. THE STATE OF MADRAS** [1963] 14 S.T.C. 750 (Mad.).

—**Sec. 7(4)—Certificate of registration—Erroneous inclusion of goods in certificate—Whether officer can amend it subsequently—“For any other sufficient reason” in section 7(4)—Meaning of.**—Under section 7(4) of the Central Sales Tax Act, 1956, a certificate of registration granted under section 7(1) may be cancelled by the authority granting it, *inter alia*, for any sufficient reason. If on account of some error, the certificate specifies articles which did not fall within the terms of section 8(3)(b) of the Act read with rule 13 of the Central Sales Tax (Registration and Turnover) Rules, 1957, the error would manifestly be “sufficient reason” within the meaning of section 7(4) authorising the cancellation of the certificate *qua* the items which were erroneously included. But it would not be open to the High Court in a petition under Article 226 to decide that other categories of goods which the Sales Tax Officer had not ordered to be deleted did not fall within the terms of section 8(3)(b) read with rule 13.—**J. K. COTTON SPINNING AND WEAVING MILLS CO. LTD. v. THE SALES TAX OFFICER, KANPUR, AND ANOTHER** [1965] 16 S.T.C. 563 (S.C.).

—**Sec. 7(4)—Certificate of registration issued under section 7(2), Central Sales Tax Act, 1956—Whether can be cancelled under section 7(4)(b) for non-payment of sales tax during a year or few years—“Ceased to be liable to pay tax”, meaning of—Explanation to section 7(2)—Whether can be invoked for purpose of section 7(4)(b).**—The expression “the dealer has ceased to be liable to pay tax under the sales tax law of the appropriate State” in section 7(4)(b) of the Central Sales Tax Act, 1956, means that the dealer has placed himself in a more or less permanent position when no longer

sales tax can be levied on him under the State statute. The fact that the dealer has not paid or may not have paid sales tax for one or two years or for a continuous period of a few years is something different from what that expression contemplates. Therefore an order of the Sales Tax Officer under section 7(4)(b) cancelling a certificate of registration issued to a dealer under section 7(2) on the ground that he has not paid sales tax under the State Act for two years is not a valid order. The provisions in the Explanation to section 7(2) will assist a dealer only in the matter of getting the certificate of registration under section 7(2). The explanation cannot be invoked for the purpose of section 7(4)(b).—**CITY THEATRES PRIVATE LTD., TRIVANDRUM v. SALES TAX OFFICER, FIRST CIRCLE, TRIVANDRUM** [1963] 14 S.T.C. 1060 (Ker.).

—**Sec. 7(4)—Certificate of registration—Cancellation—Grounds on which certificate can be cancelled under Punjab Act and Central Act—“Information furnished under section 16 or otherwise received”—Meaning of—Punjab General Sales Tax Act (46 of 1948), Secs. 7(4), (6), 16.**—Certificates of registration granted to a dealer under the Punjab General Sales Tax Act, 1948, and the Central Sales Tax Act, 1956, were cancelled on the ground that some transactions entered into by the dealer were bogus transactions and that the dealer was making bogus and false sales to different registered dealers thereby evading tax at all stages of these transactions: **Held**, (1) that the cancellation under the Punjab General Sales Tax Act, 1948, not being in accordance with any provisions of that Act, was wholly illegal; (2) that the cancellation under the Central Sales Tax Act, 1956, was in order, because the grounds on which the certificate had been cancelled did fall within the ambit of the phrase “or for any other sufficient reason” in section 7(4). Under the Punjab General Sales Tax Act, 1948, the grounds on which the certificate of registration granted to a dealer can be cancelled are only those mentioned in sections 7(6) and 16. Under section 7(4) the Commissioner or his delegate can only cancel the certificate in accordance with the information furnished under section 16 or otherwise received, but the information which is otherwise received must be information pertaining to section 16. A certificate of registration can be cancelled only after the dealer has been given a proper opportunity of showing cause why it should not be cancelled.—**SHRI HAR-CHARAN PARKASH v. THE ASSESSING AUTHORITY, JULLUNDUR CITY** [1963] 14 S.T.C. 549 (Punj.).

—**Secs. 8(1), (2A), 9(3)—Manufacturer of matches—Assessment under Central Sales Tax Act—Whether rules prescribe method of computing turnover—**

Applicability of local sales tax law—Scope of section 8(1), (2) and (2-a)—“In the same manner” in section 9(3), meaning of—Excise duty paid to Central Government and recovered from buyer—Whether part of sale price—Whether freight had been separately charged—Sales tax collected—Whether could be included in turnover—Sales to dealers in Jammu and Kashmir when Act was not extended to that State—Whether inter-State sales—Central Sales Tax (Registration and Turnover) Rules, 1957, Rule 11(2).—The assessee manufacturing matches and selling the product both inside the State and to dealers outside the State was assessed to sales tax for the year 1957-58 under the Central Sales Tax Act, 1956. The assessee contended (1) that the charging provision in the Act, section 8, did not come into play because the Central Sales Tax (Registration and Turnover) Rules, 1957, framed under the Act did not prescribe the method of computing the turnover, (2) that as the Central Sales Tax Act had to be administered in the same manner as the Madras General Sales Tax Act and as the excise duty paid to the Central Government was allowable as a deduction under the Madras General Sales Tax Act, a similar relief should be granted in the assessment under the Central Sales Tax Act as well, (3) that the consideration for the sale of matches did not include the excise duty paid by him to the Central Government, (4) that the freight charges incurred by him should be excluded from the turnover, and (5) that the sales to dealers in the State of Jammu and Kashmir were not inter-State sales because the Central Sales Tax Act had not been extended to that State: *Held*, (1) that even in the form in which rule 11(2) stood prior to its amendment in September, 1958, provision was made for the determination of the turnover of the dealer. The aggregate of the sale prices initially formed the turnover and when rule 11(2) stipulated that for purpose of section 8 certain amounts were to be deducted from such aggregate, the determination of the turnover for the purpose of section 8 was complete; (2) that the tax that was leviable either under section 8(1) or section 8(2) was on the turnover under the Central Sales Tax Act and not that under the Madras General Sales Tax Act. If a case was taken out of section 8(1) and made taxable under section 8(2), it was only the rate specified under the sub-section that should apply to the transaction and not the entire State law. There was nothing in any of the provisions of section 8(2) or (2-A) to say that the inter-State nature of the transaction was taken away and the transaction became an intra-State one. It was only if the transaction was specifically declared to be deemed to be one inside the State that the local sales tax law could apply to it wholly. Therefore

by the terms of section 8 the assessee was not entitled to have the excise duty paid in respect of the goods excluded from the turnover; (3) that the phrase “in the same manner” in section 9(3) did not make applicable all the incidents of the local sales tax law to the assessment under the Central Sales Tax Act; what was contemplated by that phrase was that the procedure of making an assessment, collection of tax etc. was the same as laid down in the local Sales Tax Act. The application of that procedural provision of the local law did not assimilate other provisions in that law which dealt with the determination of the turnover, which, in so far as the Central Sales Tax Act was concerned, was required to be determined only under the Central Act and the rules framed thereunder; (4) that any amount which the buyer was called upon to pay, except such amounts as might be specified in the definition of “sale price” as being excludable therefrom, must form part of the sale price of the dealer. Therefore the excise duty paid by the assessee did form part of the sale price of the goods. The fact that a separate debit note was prepared by the assessee for the excise duty paid by him and the amount was subsequently recovered from the buyer or even that a separate indication of the amount of excise duty paid in respect of the goods was noted in the invoice did not make any difference; (5) that unless freight had been separately charged to the knowledge of the buyer, the cost of the freight could not be deducted from the sale price. Where after charging an inclusive price in respect of the goods sold, an entry was made at the bottom of the bill giving the number of the railway receipt and other particulars of freight incurred, the indication on the bill did not amount to a separate charge in respect of the freight; (6) that although the Central Sales Tax Act was not extended to the State of Jammu and Kashmir till 13th March, 1958, sales which occasioned the movement of the goods from the Madras State to the State of Jammu and Kashmir were inter-State sales. If in the working of an Act, an anomaly in its incidence not consciously intended by the Legislature is noticed, it may be permissible to so interpret the Act as to avoid that anomaly. But where by not extending the Act to an area, the Legislature did deliberately create a distinction between transactions in which such area was involved and transactions in other areas, it is not an anomaly which judicial interpretation is called upon to investigate. Parliament is fully competent by reason of the residuary entry in List I of Schedule VII of the Constitution of India, to bring to tax as part of the turnover, any amount, be it tax or designated by any other name. *George Oakes (Private) Ltd. v. The State of Madras* [1961] (12

S.T.C. 476) followed.—S. MARIAPPA NADAR AND OTHERS v. THE STATE OF MADRAS [1962] 13 S.T.C. 371 (Mad.).

—**Secs. 8, 9—Assessment under Central Sales Tax Act—Applicability of local sales tax law—Transactions not liable to be taxed under local Act—Whether assessable under Central Act.**—The assessee, a dealer in powerloom and handloom textiles was assessed to tax for the year 1957-58, under section 9 of the Central Sales Tax Act, 1956, as it stood before its amendment by the Central Sales Tax (Second Amendment) Act, 1958. The assessee contended that as he was not the first or the earliest of successive dealers in respect of the turnover and therefore not liable to be taxed under the Mysore Sales Tax Act, 1957, he could not also be taxed under the Central Sales Tax Act, 1956. The High Court accepted the plea on the ground that by virtue of section 8(2) of the Central Act, any exemption given by a State Act or the point determined by it at which a sale was to be taxed applied also to assessments under the Central Act. On appeal to the Supreme Court: *Held*, by the majority (SUBBA RAO and SIKRI, JJ.; SHAH, J., dissenting) that the expression “levied” (meaning “imposed”) in section 9(1) of the Central Act referred to the expression “levied” in section 5(3)(a) of the State Act and therefore the Central Act had not made a departure in the manner of levy of tax on the specified goods which were taxed only at a single point under the State Act. SHAH, J.—The use of the expression “in the same manner” in section 8(2) of the Central Act has not the effect of assimilating the procedural and the substantive provisions relating to the imposition, levy and collection of tax as are provided by the State law in the matter of collection of tax under the Central Act. Under sub-sections (1) and (2) of section 9 of the Central Act the power conferred upon the authority competent to assess the tax in the same manner as the tax on the sale or purchase of goods under the general sales tax law does not include the power to admit to exemptions provided by the State law inter-State sales taxable under the Central Act. Decision of the Mysore High Court in *Yaddalam Lakshminarasimhiah Setty & Sons v. State of Mysore* [1962] (13 S.T.C. 583) affirmed on different grounds.—THE STATE OF MYSORE v. YADDALAM LAKSHMINARASIMHIAH SETTY AND SONS [1965] 16 S.T.C. 231 (S.C.).

—**Secs. 8, 9—Assessment under Central Sales Tax Act—Applicability of local sales tax law—Transaction not liable to be taxed under local Act—Whether assessable under Central Act.**—In this case, the Supreme Court (SUBBA RAO and SIKRI, JJ.; SHAH, J., dissenting) followed the decision in

State of Mysore v. Yaddalam Lakshminarasimhiah Setty and Sons [1965] (16 S.T.C. 231) and dismissed the appeal by the State against the decision of the High Court in *Mysore Silk House v. State of Mysore* [1962] (13 S.T.C. 597).—THE STATE OF MYSORE v. MYSORE SILK HOUSE [1966] 17 S.T.C. 309 (S.C.).

—**Secs. 8, 9—Assessment under Central Sales Tax Act—Applicability of local sales tax law—Transaction not liable to be taxed under local Act—Whether assessable under Central Act.**—In this case, the Supreme Court (SUBBA RAO and SIKRI, JJ.; SHAH, J., dissenting) followed the decision in *State of Mysore v. Yaddalam Lakshminarasimhiah Setty and Sons* [1965] (16 S.T.C. 231) and dismissed the appeal by the State against the decision of the High Court in *Karnatak Coffee Company v. Commercial Tax Officer, Davanagere* [1962] (13 S.T.C. 658).—THE STATE OF MYSORE v. KARNATAK COFFEE CO. [1966] 17 S.T.C. 311 (S.C.).

—**Secs. 8, 9—Assessment under Central Sales Tax Act—Applicability of local sales tax law—Transactions not liable to be taxed under local Act—Whether exempt under Central Act.**—Where intra-State sales of tapioca chips were exempt from taxation under the General Sales Tax Act, 1125, by virtue of the notification dated 23rd September, 1958, issued under section 6 of that Act, inter-State sales of such goods were also not liable to taxation under the Central Sales Tax Act, 1956, by virtue of section 9 of the Central Act. *The State of Mysore v. Yaddalam Lakshminarasimhiah Setty and Sons* [1965] (16 S.T.C. 231) followed.—LAXMI STARCH FACTORY LTD. v. STATE OF KERALA [1965] 16 S.T.C. 794 (Ker.).

—**Secs. 8, 9—Applicability of local sales tax law—Last purchase alone taxable under local Act—Other purchases—Whether taxable under Central Act.**—The expression “levied” in section 9(1) of the Central Sales Tax Act, 1956, comprehends also the point at which tax is attracted under the State Act. If therefore what is taxable under the Madras General Sales Tax Act, 1959, is only the last purchase, turnover representing purchases which do not answer that description cannot be taxed under section 6 of the Central Sales Tax Act, 1956. *The State of Mysore v. Yaddalam Lakshminarasimhiah Setty and Sons* [1965] (16 S.T.C. 231) followed. *Abbas & Co. v. The State of Madras* [1962] (13 S.T.C. 433) referred to.—EAST INDIA CORPORATION LTD. v. THE STATE OF MADRAS [1965] 16 S.T.C. 1067 (Mad.).

—**Sec. 8—Condition for claiming exemption under section 8—Goods subjected to single point levy under**

local sales tax law—Effect—Differentiation in levy of tax under section 8(1) and (2)—Whether discriminatory—Constitution of India, Art. 14.—For claiming exemption from the levy of tax under section 8(1) of the Central Sales Tax Act, 1956, the goods should be totally exempt from the levy of tax under the local sales tax law. Where the exemption from taxation is conferred on conditions such as that the turnover of a dealer under the local sales tax law is below the minimum prescribed, or that the tax will attach to a transaction only in certain circumstances, there is no exemption from tax “generally” within the meaning of section 8(1). If, therefore, the sale of certain goods is subject to tax at a single point under the local sales tax law, it cannot be said that the sale or purchase of such goods is exempt from tax under that law. For the purpose of attaching liability to sales tax under section 8(2), the fact that in respect of that transaction he may not be liable under the local sales tax law (the goods being subject only to a single point levy under the local sales tax law) is of no consequence. The Central Sales Tax Act, in so far as it makes certain transactions liable under section 8(1) and certain others under section 8(2) cannot come under the attack of a discriminatory levy. *K. Mohamed Elias and Co. and Others v. The State of Madras* [1962] (13 S.T.C. 425) followed. *Krishna Iyer v. State of Madras* [1956] (7 S.T.C. 346) and *Dalmia v. Justice Tendolkar* ([1959] S.C.J. 147) referred to.—*M. A. ABBAS AND CO. v. THE STATE OF MADRAS* [1962] 13 S.T.C. 433 (Mad.). But see the decision of the Supreme Court in [1966] 17 S.T.C. 309 (S.C.).

—*Sec. 8—Dealer in raw silk—Exemption from tax under local law if licence is taken—Liability to tax under section 8 (2), Central Act—Licence fee—Whether tax.*—The petitioners were dealers in raw silk and they effected inter-State sales of those goods during the period 1st July, 1957, to 31st March, 1958. A dealer in raw silk was exempt from tax both under the Mysore Sales Tax Act, 1948, and the Mysore Sales Tax Act, 1957, if he had obtained a licence as required by these Acts. The petitioners had obtained the required licences and but for the coming into force of the Central Sales Tax Act, 1956, on 1st July, 1957, they would not have been liable to be assessed to tax on the turnover. The question was whether the petitioners were liable to sales tax under section 8(2) of the Central Sales Tax Act, 1956: *Held*, that if the licence fee imposed on the petitioners was in fact tax then the liability of the petitioners could not be more than what it would have been if the transactions had taken place prior to 1st July, 1957. If the licence fee

however was not “tax” then that liability to tax at the rate and manner they would have been taxed under the appropriate State law had they not taken the licence, was not open to dispute; (2) that the licence fee levied on the petitioners under the Mysore sales tax laws was in fact “tax” as understood in section 8(2) and therefore the petitioners were not liable to pay any amount in excess of the amount that they would have been liable to pay under the State law as licence fee if the transactions were inter-State transactions.—*C. S. NAGARAJA SETTY AND ANOTHER v. DEPUTY COMMISSIONER OF COMMERCIAL TAXES, CITY DIVISION, BANGALORE, AND ANOTHER* [1962] 13 S.T.C. 578 (Mys.).

—*Sec. 8—Assessment under Central Sales Tax Act—Applicability of local sales tax law—“Same manner” in section 8(2), meaning of—Scope of section 8(1) and (2)—Transaction not liable to be taxed under local Act—Whether assessable under Central Act.*—Under section 8(2) of the Central Sales Tax Act, 1956, prior to its amendment by Act XXXI of 1958 a “sale” in the course of inter-State trade or commerce is to be taxed at the same rate and in the same manner as it would have been taxed, under the appropriate State law, if it had been an intra-State transaction, but without taking into consideration the minimum turnover fixed by the State law for the purpose of determining the liability of the “dealer” to be assessed under the State sales tax law. The words “same manner” in section 8(2) relate to the calculation of the tax and not refer to the procedure to be adopted while assessing the “dealer”. The petitioner was a dealer in textiles manufactured on powerlooms and the turnover related to sales effected by him in the course of inter-State trade or commerce during the period 1st July, 1957, to 31st March, 1958. Under the Mysore Sales Tax Act, 1948, those goods were liable to be taxed under section 3(2) read with Schedule I, entry 2(a), and under the Mysore Sales Tax Act, 1957, they were liable to be taxed under sec. 5(3) read with entry 7 in Schedule II had they been intra-State transactions: *Held*, that the liability of the petitioner under section 8(2) of the Central Sales Tax Act, 1956, on his inter-State sales could not be any more than what it would have been had they been intra-State sales and liable to be taxed under the Mysore sales tax law. The licence fee levied on the petitioner under the Mysore Sales Tax Acts of 1948 and 1957 was tax as contemplated in section 8 of the Central Sales Tax Act, 1956. *C. S. Nagaraja Setty v. The Deputy Commissioner of Commercial Taxes, City Division, Bangalore* [1962] (13 S.T.C. 578) followed.—*YADALAM LAKSHMINARASIMHAH SETTY &*

SONS *v.* STATE OF MYSORE [1962] 13 S.T.C. 583 (Mys.). On appeal to Supreme Court, this decision was affirmed on different grounds.—See [1966] 17 S.T.C. 309 (S.C.).

—**Sec. 8—Second sale not taxable under State law—Whether taxable under Central Act—Scope of sec. 8(1), proviso, and (2)—Exemption from tax “generally”—Meaning of.**—The petitioner was a dealer in power-loom cloths which were the subject-matter of inter-State sales during the period 1st July, 1957, to 31st March, 1958. Under the Mysore Sales Tax Act, 1957, the transactions, if they had been intra-State sales, would not be subject to any tax, they being second sales: *Held*, that the turnover relating to inter-State sales was not liable to be taxed either under section 8(1) or section 8(2) of the Central Sales Tax Act, 1956. Under section 8(2) the liability of a dealer, excepting as regards the minimum turnover, will under no circumstances be more than what it would have been under the provisions of the appropriate State law, had the disputed transactions related to intra-State sales. The exemption dealt with in the proviso to section 8(1) related to the sale of goods in the course of inter-State trade or commerce referred to in section 8(1). *Yadalam Lakshminarasimhiah Setty & Sons v. State of Mysore* [1962] 13 S.T.C. 583 followed.—*MYSORE SILK HOUSE v. THE STATE OF MYSORE* [1962] 13 S.T.C. 597 (Mys.). On appeal to Supreme Court, this decision was affirmed on different grounds.—See [1966] 17 S.T.C. 309 (S.C.).

—**Sec. 8—Second sale not taxable under State law—Whether taxable under section 8(1) or (2)—Scope of exemption under proviso to section 8(1).**—Under sub-section (2) of section 8 of the Central Sales Tax Act, 1956, a tax could be demanded under its provisions only in cases in which such tax could have been demanded under the State law if the sale had taken place inside that State. For the applicability of section 8(2) the test that should be applied by the assessing authority is to see whether if the goods sold by dealers in other States had been sold inside the State, any sales tax could have been demanded in respect of those transactions under the State enactment. The proviso to section 8(1) applies only to inter-State sales referred to in sub-section (1) and the sales must be of goods described in sub-sec. (3) to registered dealers outside the State. A finding of the officer that the goods sold by a dealer cannot be regarded as goods referred to in the sub-section is a finding on a question of fact. What the proviso to section 8(1) says is that although under sub-section (1) in respect of an inter-State sale referred to in that sub-section,

tax is payable at one per cent. of the turnover, that tax is not payable if the transaction, had it taken place inside a State was not taxable under the State law. The proviso further provides that if the sales tax payable under the State law, if the transaction had taken place inside the State, was less than that payable under sub-section (1), the tax payable has to be computed at the rate specified in the State law and not under sub-section (1). Under entry 32 of Schedule I to the Mysore Sales Tax Act, 1948 (which was operating in the State of Mysore during the period ending 30th September, 1957) in the case of coffee the only sale which attracted sales tax was the sale by the first or earliest of the successive dealers in the State. For the purpose of entry 32, the word “coffee” occurring in it included “coffee powder”. The coffee powder sold by the petitioner during the period ending 30th September, 1957, was manufactured by grinding coffee seeds purchased by the petitioner in the State. As sales tax was paid on the sale of coffee seeds no tax was payable on the sale of the coffee powder if the sale had taken place inside the State: *Held*, (1) that under section 8(2) the petitioner was not liable to pay any tax on inter-State sales of coffee powder; (2) that the petitioner however was liable to pay tax on the turnover relating to the metal containers in which the coffee powder was supplied. Under entry 43 in the Second Schedule to the Mysore Sales Tax Act, 1957 (which was in force during the period subsequent to 1st October, 1957) coffee seeds were subject to a single point tax on the first or earliest of successive dealers in the State. Explanation III to the Schedule provided that “where tax has been levied in respect of purchase of coffee seeds under item 43, the coffee powder made out of those coffee seeds is not liable to tax under this Act”: *Held*, that if the coffee powder sold by the petitioner during the period 1st October, 1957, to 20th March, 1958, was made out of coffee seeds the purchase of which had been taxed under the Mysore State law, no sales tax under either section 8(1) or (2) of the Central Sales Tax Act, 1956, was exigible in respect of inter-State sales of such coffee powder. The decision of the High Court in *Mysore Silk House v. The State of Mysore* [1962] (13 S.T.C. 597) does not require reconsideration.—*KARNATAK COFFEE COMPANY v. COMMERCIAL TAX OFFICER, DAVANAGERE* [1962] 13 S.T.C. 658 (Mys.). On appeal to Supreme Court, this decision was affirmed on different grounds. See [1966] 17 S.T.C. 311 (S.C.).

—**Sec. 8—Last purchase alone taxable under State law—Whether inter-State sale can be taxed—Scope of section 8(2), Central Sales Tax Act (74 of 1956) prior**

to amendment by Act 31 of 1958.—Where the taxable point under the General Sales Tax Act, 1125, of copra and coir was the last purchase in the State by a dealer who was not exempt from taxation under section 3(3): *Held*, that as under the State law the sales of these commodities could not be taxed, sales of such commodities coming within the ambit of section 8(2) of the Central Sales Tax Act, 1956, prior to its amendment by Act 31 of 1958, could not also be taxed. What sub-section (2) of section 8 directs is to treat the inter-State sales as intra-State sales and assess them on the basis of the State enactment. Therefore if there is no liability under the State enactment, there can be no liability under the Central Act either.—DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX, KERALA STATE, SOUTH ZONE, QUILON *v. K. S. GOPALAN AND ANOTHER* [1962] 13 S.T.C. 832 (Ker.).

—**Sec. 8—Scope of—Liability of green ginger to tax under Central Act—Exemption on obtaining licence—Whether general exemption as contemplated in section 8 (2A), Central Act.**—A dealer in green ginger was not liable to be taxed under the Central Sales Tax Act, 1956, for the period up to 1st October, 1958, since there was no sales tax on the sale of that commodity under the State Act. For the period from 1st October, 1958, in view of the workings of the substituted sub-section (2) of section 8 and sub-section (2A) and the explanation to that sub-section, tax could be imposed under the Central Act even when the tax imposed by the State Act was only a purchase tax. Where in order to get the benefit of an exemption a licence has to be obtained under the State Act, it cannot be said that there is a general exemption from tax as contemplated by section 8(2A) and the explanation to that sub-section. Therefore for the period 1st October, 1958, to 31st March, 1959, tax could be imposed on the turnover of “green ginger” under the Central Sales Tax Act, 1956.—*KRISHNA IYER v. STATE OF KERALA* [1962] 13 S.T.C. 838 (Ker.).

—**Secs. 8, 15—Assessment under Central Sales Tax Act—Scope of sections 8 and 15—Only purchase transactions liable under State law—Sale transactions, whether liable under Central Act.**—Only such transactions as could have been taxed under the State law can be taxed under section 8(2) of the Central Sales Tax Act, 1956. If therefore under the State law only purchase transactions can be taxed and not the sale transactions, such sale transactions cannot also be taxed under section 8(2) of the Central Act. Section 15 of the

Central Act operates on a field totally different from the field covered by section 8. Section 8 deals with levying tax on sales effected in the course of inter-State transactions while section 15 deals with levying of tax on declared goods not covered by section 8. In that view no question of harmonious interpretation of the sections arises. *Yadalam Lakshminarasimhiah Setty & Sons v. State of Mysore* [1962] (13 S.T.C. 583) followed. *S. Mariappa Nadar and Others v. The State of Madras* [1962] (13 S.T.C. 371) and *M. A. Abbas & Co. v. State of Madras* [1962] (13 S.T.C. 433) dissented from.—*P. K. P. ABDUL HARKEEN SAHIB v. MYSORE SALES TAX APPELLATE TRIBUNAL, BANGALORE AND OTHERS* [1963] 14 S.T.C. 578 (Mys.).

—**Sec. 8—Scope of section 8(2), Central Act—Sales of handloom cloth falling under section 8(2), Central Act—Whether entitled to exemption granted to handloom cloth by notification under section 9(1), Andhra Pradesh Act—Andhra Pradesh General Sales Tax Act (6 of 1957), Sec. 9(1).**—An assessee dealing in handloom cloth and whose sales fall under section 8(2) of the Central Sales Tax Act, 1956, is not entitled to the benefit of the exemption granted to handloom cloth under Notification No. 2328 dated 13th December, 1957, issued by the State Government in exercise of the powers conferred under section 9(1) of the Andhra Pradesh General Sales Tax Act, 1957. The exemption granted by the notification is only in respect of goods exigible to tax under the Andhra Pradesh General Sales Tax Act, 1957, and the State has no power acting under section 9(1) to give exemption to goods liable to be taxed under the Central Act. The fiction enacted by section 8(2) of the Central Sales Tax Act, 1956, is only for a limited purpose and that is for calculating the rate. The position of a dealer under section 8(2) could not be equated to a dealer governed by the Andhra Pradesh General Sales Tax Act, 1957, for every purpose.—*SRI SURYA TRADING FIRM AND OTHERS v. THE STATE OF ANDHRA PRADESH* [1963] 14 S.T.C. 720 (A.P.).

—**Sec. 8—Assessment under section 8(2), Central Act—Applicability of local Sales Tax Act—Transactions not liable to tax under local Act—Whether assessable under section 8(2)—Containers and other materials used for packing—Liability to tax—U.P. Sales Tax Act (15 of 1948).**—The assessee was a dealer carrying on inter-State business in *khandsari* sugar in Uttar Pradesh. It was neither an importer nor a manufacturer of *khandsari* sugar and, therefore, under Notification No. 907 dated 31st March, 1956, it would not be liable to pay

tax under the U.P. Sales Tax Act, 1948, even though its turnover was above the prescribed minimum (Rs. 12,000). The question was whether the assessee was liable to pay tax under section 8(2) of the Central Sales Tax Act, 1956, in respect of its inter-State sales of *khandsari* sugar for the assessment year 1957-58: *Held*, that as the assessee was not liable to be taxed under the U.P. Sales Tax Act on the sale of *khandsari* sugar, it was not liable to be assessed to tax under section 8(2) of the Central Sales Tax Act also. Containers and other materials used in, or intended for, the packing are to be taxed at the rate mentioned in section 8(1) only if they are sold to the persons mentioned in clauses (a) and (b) of section 8(1). If they are not sold to those persons and the tax payable on the turnover of their sales is governed by section 8(2) it is to be calculated as if it were a tax payable under the State Act, *i.e.*, the rates mentioned in the State Act are to be applied to the turnover of that sale. [The petition was however dismissed on the ground that the assessee had an alternative adequate remedy open to it by means of an appeal and that it should not be permitted to short-circuit the departmental remedy by applying for *certiorari*.] *Yadalam Lakshminarasimhiah Setty & Sons v. State of Mysore* [1962] (13 S.T.C. 583) and *Deputy Commissioner of Agricultural Income-tax and Sales Tax, Kerala State, South Zone, Quilon v. K. S. Gopalan and Another* [1962] (13 S.T.C. 832) relied on. *S. Mariappa Nadar and Others v. The State of Madras* [1962] (13 S.T.C. 371) and *M. A. Abbas and Co. v. The State of Madras* [1962] (13 S.T.C. 433) dissented from.—*MRS. PANNA LAL RAM KISHORE v. SALES TAX OFFICER, BIJNOR, AND ANOTHER* [1964] 15 S.T.C. 245 (All.).

—**Sec. 8—Sales to registered dealer—Certificate of registration—Business of mining ore—Goods which can be purchased at concessional rate of tax—Central Sales Tax (Registration and Turnover) Rules, 1957, Rule 13.**—The nature of the rule-making power under section 13(1)(e) of the Central Sales Tax Act, 1956, and the language of rule 13 of the Central Sales Tax (Registration and Turnover) Rules, 1956, furnish the key to the meaning and significance of section 8(3)(b) of the Central Sales Tax Act, 1956. The registering authority cannot exempt any goods or class of goods under section 8(3)(b) unless those particular goods or class of goods are *enumerated* by the Central Government in the rule. In other words, the authority cannot go beyond the enumeration of the categories mentioned by the Central Government in rule 13: *Held*, (1) the assessee purchasing different kinds of goods for use in

manufacture in its copper and kyanite mines and factory was entitled to include the following goods in the certificate of registration under section 8(3)(b) read with rule 13:—(i) Locomotives and motor vehicles actually used in carrying and removing raw materials during the process of manufacture; (ii) Locomotives and motor vehicles used both underground and on surface during mining operations; (iii) Accessories and spare parts for such locomotives and such motor vehicles; (iv) Tyres and tubes for such motor vehicles; (v) Laboratory fittings used for the sampling and analysis of the ores and other raw materials in the initial stages of mining operation and in the process of manufacture; (2) the assessee, however, was not entitled to include the following goods in the certificate of registration:—(i) hospital equipments, (ii) medical supplies, (iii) cane baskets for sanitary use, and (iv) stationery.—*INDIAN COPPER CORPORATION LTD. v. COMMISSIONER OF COMMERCIAL TAXES, BIHAR AND OTHERS* [1962] 13 S.T.C. 494 (Pat.). On appeal to Supreme Court this decision was partly reversed. See below.

—**Sec. 8—Sales to registered dealer—Certificate of registration—Business of mining ore and manufacture of finished products from ore for sale—Goods which can be purchased at concessional rate of tax—Central Sales Tax (Registration and Turnover) Rules, 1957, Rule 13.**—The assessee mined copper and iron ore from its own mines, transported the ore to its factory and manufactured finished products from the ore for sale. The assessee had for the purpose of its business to purchase diverse categories of goods from outside the State. Some of those goods were used in its factory in the process of manufacture and in the copper and kyanite mines; other goods were purchased for use in its offices, factory and mines and in the hospitals set up for affording medical facilities to its employees. The question was whether the following goods should be specified under sec. 8(3)(b) of the Central Sales Tax Act, 1956, in the certificate of registration issued to the assessee:—(i) Locomotives and motor-vehicles; (ii) accessories and spare parts for motor-vehicles and locomotives; (iii) household, laboratory, hospital and general furnishings and fittings; (iv) medical supplies; (v) stationery; (vi) tyres and tubes for motor-vehicles; and (vii) cane baskets. The High Court held that the assessee was entitled to include only the following goods in the certificate of registration:—(a) Locomotives and motor-vehicles actually used in carrying and removing raw materials during the process of manufacture; (b) locomotives and motor-vehicles used both underground and on surface during mining

operations; (c) accessories and spare parts for such locomotives and such motor-vehicles; (d) tyres and tubes for such motor-vehicles; (e) laboratory fittings used for the sampling and analysis of the ores and other raw materials in the initial stages of mining operations and in the process of manufacture. With special leave, the assessee appealed to the Supreme Court: *Held*, that items (i), (ii) and (vi) (locomotives and motor-vehicles, accessories and spare parts for motor-vehicles and locomotives, and tyres and tubes for motor-vehicles), laboratory fittings out of item (iii) used for sampling and analysis of the ore and other raw materials in the mining operations and in the process of manufacture for sale and cane baskets out of item (vii) used for carrying ore and other materials used in the course of manufacture, should be specified in the certificate of registration. Household, hospital equipment with furnishings and fittings [part of item (iii)], medical supplies [item (iv)], stationery [item (v)] and cane baskets used for collecting refuse to protect the health and cleanliness in the colony of workmen [part of item (vii)] should not be included in the certificate of registration. In a case where a dealer is engaged both in mining operations and in the manufacturing process—the two processes being interdependent—it would be impossible to exclude vehicles which are used for removing from the place where the mining operations are concluded to the factory where the manufacturing process starts. The expression “goods intended for use in the manufacturing or processing of goods for sale” may ordinarily include such vehicles as are intended to be used for removal of processed goods from the factory to the place of storage. The mere fact that there is a statutory obligation imposed upon the owner of the factory or the mine to maintain hospital facilities would not supply a connection between the goods and the manufacturing or processing of goods or the mining operations so as to make them goods intended for use in those operations. The expression “intended to be used” cannot be equated with “likely to facilitate” the conduct of the business of manufacturing or of processing goods or of mining. Decision of the Patna High Court in *Indian Copper Corporation Ltd. v. Commissioner of Commercial Taxes, Bihar and Others* [1962] (13 S.T.C. 494) partly reversed.—*INDIAN COPPER CORPORATION LTD. v. COMMISSIONER OF COMMERCIAL TAXES, BIHAR, AND OTHERS* [1965] 16 S.T.C. 259 (S.C.).

—*Sec. 8—Sales to registered dealer—Goods for use in mining—Meaning of—Business of mining coal—Goods which can be purchased at concessional rate of tax—Central Sales Tax (Registration and Turnover)*

Rules, 1957, Rule 13.—Mining is not “manufacture or processing” of any goods within the meaning of section 8(3)(b) of the Central Sales Tax Act, 1956, and rule 13 of the Central Sales Tax (Registration and Turnover) Rules, 1957. The use of the words “manufacture or processing” in relation to excavation of coal is altogether inept. The petitioner-company carrying on the business of mining coal and trading in coal and coke applied to the Sales Tax Officer for inclusion of the following goods in the certificate of registration issued to it under section 7(3) of the Central Sales Tax Act, 1956:—Iron and steel, medicines and insecticides, welding sticks, sanitary fittings, motor-trucks, spare parts of motor-trucks including tyres and tubes, furniture and stationery. The Sales Tax Officer rejected the application and the petitioner thereupon applied under Articles 226 and 227 of the Constitution: *Held*, (1) that the articles intended for use must be “in mining” and not “on mines” and the words “in mining” connote “in the process of mining”; (2) that motor-trucks, furniture, stationery, spare parts of motor vehicles, sanitary fittings, medicines and insecticides cannot be regarded as goods intended for use in coal-mining and the petitioner was, therefore, not entitled to include them in his certificate of registration.—*INDRA SINGH & SONS PRIVATE LTD. v. SALES TAX OFFICER, RAIGARH CIRCLE, RAIGARH* [1962] 13 S.T.C. 270 (M.P.). On appeal to Supreme Court, this decision was affirmed. See below.

—*Sec. 8—Certificate of registration—List of goods which can be purchased at concessional rate of tax—Goods for use “in mining”—Meaning of—Central Sales Tax (Registration and Turnover) Rules, 1957, Rule 13.*—The appellant-company was the owner of a colliery and was carrying on the business of mining coal and trading in coal and coke. The question was whether the appellant was entitled to include under the Central Sales Tax Act, 1956, in the list of goods or classes of goods for use in the production of coal in the certificate of registration issued to it, the following, *inter alia*: sanitary goods, spare parts for motor vehicles including tyres and tubes, furniture and motor trucks: *Held*, (i) that the expression “in mining” in rule 13 of the Central Sales Tax (Registration and Turnover) Rules, 1957, did not mean in the business of mining. Goods which could be included in the list had to be goods intended for use only in the actual activity of mining, which activity would include raising the coal and storing it in heaps or in warehouses. The expression could not be extended to include delivering the coal to a siding at the railway station.

Spare parts of motor vehicles, including tyres and tubes, and motor trucks could not be included in the certificate of registration; (ii) that furniture and sanitary fittings were not intended to be used in mining, though they were likely to facilitate the business of mining. They could not therefore be included in the certificate of registration. Decision of the Madhya Pradesh High Court in *Indra Singh and Sons Private Ltd. v. Sales Tax Officer, Raigarh Circle* [1962] (13 S.T.C. 270) affirmed. *Indian Copper Corporation Ltd. v. Commissioner of Commercial Taxes, Bihar* [1965] (16 S.T.C. 259) followed.—*INDRA SINGH & SONS (P.) LTD. v. SALES TAX OFFICER, RAIGARH CIRCLE, RAIGARH, AND OTHERS* [1966] 17 S.T.C. 510 (S.C.).

—**Sec. 8—Certificate of registration—Company manufacturing and selling cotton yarn—Goods which the company can purchase at concessional rate of tax**—*“In the manufacture or processing of goods for sale” in rule 13 and “for any other sufficient reason” in section 7(4)—Meanings of—Erroneous inclusion of goods in certificate—Whether officer can amend it subsequently—Central Sales Tax (Registration and Turnover) Rules, 1957, Rule 13.*—The expression “goods for use in the manufacture or processing of goods for sale” in section 8(3) of the Central Sales Tax Act, 1956, and rule 13 of the Central Sales Tax (Registration and Turnover) Rules, 1957, does not include all the articles which directly or indirectly help in the manufacture of goods. Only those articles which are directly and actually needed for turning out or making of goods that are covered by that expression. It is not goods required in connection with the manufacture or in relation thereto but the goods which are used in the manufacture that fall under rule 13 read with section 8 of the Act. Therefore in the case of a company carrying on the business of manufacture and sale of cotton textiles, yarn and paints the following goods do not come under that rule: (i) photographic materials, (ii) articles required for the preparation of designs including drawing instruments, colour and chemicals, (iii) electric lights and fans, (iv) building materials, cement and lime, and (v) machinery. Machinery being a substitute of man-power makes or creates goods but is not used in the making or creation of goods. The words “for any other sufficient reason” in section 7(4) of the Central Sales Tax Act, 1956, are wide in their amplitude and a certificate of registration can be cancelled for sufficient reason. If a certificate can be cancelled in whole, it can also be cancelled in part. Therefore even if a certificate of registration was issued to a dealer after necessary enquiries and amendments were also effected to it after due enquiry, the officer

has jurisdiction under section 7(4) to modify, amend or partly cancel that certificate if it contained articles not falling within rule 13 read with section 8.—*J. K. COTTON SPINNING & WEAVING MILLS COMPANY LTD. v. SALES TAX OFFICER, SECTOR II, KANPUR, AND ANOTHER* [1964] 15 S.T.C. 711 (All.). On appeal to Supreme Court this decision was partly reversed. See below.

—**Sec. 8—Company manufacturing for sale cotton textiles, tiles and other commodities—Goods which company can purchase at concessional rate of tax**—*“In the manufacture or processing of goods for sale” in section 8(3)(b) and “for any other sufficient reason” in section 7(4)—Meanings of—Erroneous inclusion of goods in certificate—Whether officer can amend it subsequently—Central Sales Tax (Registration and Turnover) Rules, 1957, Rule 13.*—Under section 7(4) of the Central Sales Tax Act, 1956, a certificate of registration granted under section 7(1) may be cancelled by the authority granting it, *inter alia*, for any sufficient reason. If on account of some error, the certificate specifies articles which did not fall within the terms of section 8(3)(b) of the Act read with rule 13 of the Central Sales Tax (Registration and Turnover) Rules, 1957, the error would manifestly be “sufficient reason” within the meaning of section 7(4) authorising the cancellation of the certificate *qua* the items which were erroneously included. But it would not be open to the High Court in a petition under Article 226 to decide that other categories of goods which the Sales Tax Officer had not ordered to be deleted did not fall within the terms of section 8(3)(b) read with rule 13. The expression “in the manufacture of goods” in section 8(3)(b) should normally encompass the entire process carried on by the dealer of converting raw materials into finished goods. Where any particular process is so integrally connected with the ultimate production of goods that, but for that process, manufacture or processing of goods would be commercially inexpedient, goods required in that process would fall within the expression “in the manufacture of goods”. The process of designing may be distinct from the actual process of turning out finished goods. But there is no warrant for limiting the meaning of the expression “in the manufacture of goods” to the process of production of goods only. The expression “in the manufacture” takes in within its compass, all processes which are directly related to the actual production. Drawing and photographic materials falling within the description of goods intended for use as “equipment” in the process of designing, which is directly related to the

actual production of goods and without which commercial production would be inexpedient, must be regarded as goods intended for use "in the manufacture of goods". In the case of a company manufacturing for sale cotton textiles, tiles and other commodities, building materials including lime and cement not required in the manufacture of tiles for sale cannot be regarded within the meaning of rule 13, as raw materials in the manufacture or processing of goods or even as "plant". In order that "electrical equipment" should fall within the terms of rule 13, it must be an ingredient of the finished goods to be prepared, or "it must be a commodity which is used in the creation of goods". If, having regard to normal conditions prevalent in the industry, production of the finished goods would be difficult without the use of electrical equipment, the equipment would be regarded as intended for use in the manufacture of goods for sale. This would not include electrical equipment not directly connected with the process of manufacture. Office equipment such as fans, coolers and air-conditioning units, would not be admissible to special rates under section 8(1). *J. K. Cotton Spinning and Weaving Mills Company Ltd. v. Sales Tax Officer, Sector II, Kanpur, and Another* [1964] (15 S.T.C. 711) partly reversed. *Indian Copper Corporation Ltd. v. Commissioner of Commercial Taxes, Bihar and Others* [1965] (16 S.T.C. 259) referred to.—*J. K. COTTON SPINNING & WEAVING MILLS CO. LTD. v. THE SALES TAX OFFICER, KANPUR, AND ANOTHER* [1965] 16 S.T.C. 563 (S.C.).

—Secs. 8(3), 14—*Registered dealer—Certificate of registration—Manufacturer of vegetable oil products—"Containers or materials intended for being used for the packing of goods for sale"—Meaning of—"Tin sheets" and "tin plates"—Whether goods of special importance—Whether can be included in registration certificate—Central Sales Tax (Registration and Turnover) Rules, 1957, Rule 5(1).*—The expression "containers or materials intended for being used for the packing of goods for sale" in clause (c) of sub-section (3) of section 8 of the Central Sales Tax Act, 1956, has been deliberately couched in a language which brings within its sweep all kinds of ready-made receptacles or other materials which are intended or by a slight alteration or fabrication can be converted into such receptacles for the purpose of storage of goods provided the use to which those receptacles are ultimately put by the dealer is not to sell them as independent articles of sale as such, but as receptacles for storage or transportation of goods contained therein for sale. It is not necessary that those

materials should be capable of being used directly for purposes of packing. It is quite enough if the intention of the dealer is to acquire them in order that they may be used for packing of goods for sale even if in that process of adapting them for such use they have to undergo some change in shape or form. The dominant intention is that they should serve the purpose of storage or transportation of goods for sale. Neither the word "container" is confined to liquids only nor is the meaning of the words "materials for packing" restricted to wrappers to be used as a covering for solid goods. "Tin plates" and "tin sheets" are not goods of special importance which have been declared to be such under section 14 of the Central Sales Tax Act, 1956. The petitioner, a manufacturer of, and dealer in, vegetable oil products, bought "tin sheets" from dealers outside State, converted them into "tin containers" which it filled with vegetable oil products and sold them to different parties. The petitioner was a dealer registered under the Central Sales Tax Act, 1956, and was granted a registration certificate under rule 5(1) of the Central Sales Tax (Registration and Turnover) Rules, 1957. In the appropriate columns (a) and (b) the words "empty tins" and "tin sheets" were respectively entered according to the petitioner's own application. In December, 1958, the petitioner applied to the Sales Tax Officer to amend its registration certificate so as to include "tin plates" or "tin sheets" on the ground that those were used by the petitioner for packing its vegetable products for sale under section 8(3) of the Act. The Sales Tax Authorities refused to amend the certificate of registration. On a petition filed under Article 226 of the Constitution: *Held*, that the petitioner's request for amendment of its registration certificate had been declined by the Sales Tax Authorities on an erroneous interpretation of law.—*THE GANESH FLOUR MILLS CO. LTD. v. THE CHIEF COMMISSIONER, DELHI, AND OTHERS* [1968] 22 S.T.C. 264 (Delhi).

—Sec. 8—*Sales to registered dealer—Furnishing of declaration in Form C—Right to concessional rate of taxation—Whether selling dealer should make enquiries—Central Sales Tax (Registration and Turnover) Rules, 1957, Form C.*—When a purchasing dealer has furnished to the selling dealer the declaration in Form C of the Central Sales Tax (Registration and Turnover) Rules, 1957, and that declaration specifies that the goods purchased are covered by the certificate of registration obtained by the purchasing dealer as required either for resale or for use in the manufacture or processing of goods for sale, the selling dealer can be said to have complied with

the requirements of the law bringing him within the scope of section 8(1) of the Central Sales Tax Act, 1956. It is no function of the selling dealer to enter into a judicial examination of whether the goods are in fact used or usable for the manufacture or processing of goods for sale by the purchasing dealer. When the purchasing dealer declares that the subject-matter of the sale is listed in his certificate of registration in Form B as required for that purpose and furnishes the declaration in Form C, the selling dealer is not bound to enter into any examination of the matter. In so far as he is concerned he has placed himself fully within the relevant provisions of the statute and is entitled to the lower rate of taxation.—DEPUTY COMMISSIONER OF COMMERCIAL TAXES, COIMBATORE DIVISION, COIMBATORE *v.* STANES MOTORS (SOUTH INDIA) LTD., COIMBATORE [1963] 14 S.T.C. 369 (Mad.). On appeal to Supreme Court see next para.

—Secs. 8(1), (3), 10—*Sales to registered dealer—Concessional rate—Scheme of the Act and Rules—Officer assessing selling dealer—Scope of enquiry and powers—Form C containing all purposes intact—Whether complies with rules—Form C specifying purpose—Selling dealer whether should enquire—Central Sales Tax (Registration and Turnover) Rules, 1957, Rules 5(1), 12, Forms B and C.*—Reading section 8(1) with section 8(3)(b) of the Central Sales Tax Act, 1956, it is clear that the Legislature intended to grant the benefit of concessional rates of tax under the Act to registered dealers provided that the goods sold were of the class or classes specified in the certificate of registration of the purchasing dealer and the goods were intended to be used for resale by him or for use in the manufacture of goods for sale, or for use in the execution of contracts or for packing of goods for resale. The scheme of the Central Sales Tax (Registration and Turnover) Rules, 1957, read with the Central Sales Tax Act, 1956, is that the purchasing dealer as well as the selling dealer must register themselves under the Central Sales Tax Act. If declared goods are specified in the certificate of registration of the purchasing dealer and if it be certified that the goods are intended for resale by him, the sale is subject to concessional rate of tax under section 8(1). In respect of sales of other classes of goods specified in the certificate of registration of the purchasing dealer, if the goods are purchased either for resale by him, or for use in the manufacture of goods for sale, or for use in the execution of contracts, the concessional rate of tax is available, provided the selling dealer obtains from the purchasing dealer the declaration in the prescribed form duly filled in and signed by the latter containing the particulars that the goods are ordered, purchased

or supplied under a certain specific order, bill or cash memo. or chalan, for all or any of the purposes mentioned and that the goods are covered by the registration certificate of the purchaser described therein and issued under the Act. If the certificate is defective in that it does not set out all the details, or that it contains false particulars about the order, bill, cash memo. or chalan, or about the number and date of the registration certificate and specifications of goods covered by the certificate of the purchasing dealer, the transaction will not be admitted to concessional rates. The Act and the Rules do not impose an obligation upon the purchasing dealer to declare that goods purchased by him are intended to be used for one purpose only, even though under his certificate of registration he is entitled to purchase goods of the classes mentioned in section 8(3)(b) for more purposes than one. When the purchasing dealer furnishes a certificate in Form C without striking out any of the four alternatives, it is a representation that the goods purchased are intended to be used for all or any of the purposes and the certificate complies with the requirements of the Act and the Rules. The Sales Tax Authority assessing the selling dealer is competent to scrutinise the certificate to find out whether the certificate is genuine. He may also, in appropriate cases, when he has reasonable grounds to believe that the goods purchased are not covered by the registration certificate of the purchasing dealer, make an enquiry about the contents of the certificate of registration of the purchasing dealer. But it is not for the Tax Officer to hold an enquiry whether the goods specified in the certificate of registration of the purchaser can be used by him for any of the purposes mentioned by him in Form C, or that the goods purchased have in fact not been used for the purpose declared in the certificate. The authority issuing the certificate of registration under rule 5(1) has, before issuing a registration certificate, to be satisfied after making such enquiry as it thinks necessary that the particulars contained in the application are correct and complete. The enquiry should be made in the light of the nature of the business and goods which are likely to be needed either for resale, or for use in the manufacture of goods for sale, or for use in the execution of contracts. Satisfaction which is contemplated by rule 5 is objective, and may be arrived at upon a quasi-judicial enquiry. On the plain words used in section 7 of the Act and the Rules it is contemplated that the certificate of registration may only be issued after an objective satisfaction of the notified authority that the specified goods are likely to be needed for the purpose of the business of the registered dealer,

and that satisfaction is open to challenge in an appropriate proceeding before the High Court and even before the Supreme Court. Correctness or propriety of satisfaction of the notified authority in issuing the certificate in Form B that the goods are likely to be required for the purpose of the business would not however be again open to challenge before another taxing authority in proceedings for assessment of tax. If, therefore, goods are specified in the certificate of registration in Form B, it is not open, when a claim is made in respect of the purchase of those goods for the application of concessional rate of tax, to the Sales Tax Officer to deny to the selling dealer of those goods the benefit on the ground that the goods specified cannot be used by the purchasing dealer for the purpose of his business. It is open to the Tax Officer to ascertain whether the goods in respect of which a claim for concessional rate is made are specified in the certificate of registration, but if the class of goods is included in the certificate of registration in Form B he cannot say that the class of goods should not have been specified. The seller can have, in transactions of sale and purchase in the course of inter-State trade and commerce, no control over the purchaser. He has only to rely upon the representations made to him. He must satisfy himself that the purchaser is a registered dealer, and the goods purchased are specified in his certificate; but his duty extends no further. If he is satisfied on these two matters, on a representation made to him in the manner prescribed by the Rules and the representation is recorded in the certificate in Form C the selling dealer is under no further obligation to see to the application of the goods for the purpose for which it was represented that the goods were intended to be used. Whether the goods specified in the registration certificate in Form B can be used for the purpose is not for the selling dealer to determine. *Deputy Commissioner of Commercial Taxes, Coimbatore Division v. Stanes Motors (South India) Ltd.* [1963] (14 S.T.C. 369) affirmed. *Deputy Commissioner of Commercial Taxes, Madras Division v. Manohar Brothers* [1962] (13 S.T.C. 686) approved.—THE STATE OF MADRAS v. RADIO AND ELECTRICALS LTD. AND ANOTHER [1966] 18 S.T.C. 222 (S.C.).

—SECS. 8(1), (4), 13—*Declarations in Form C*—“In the prescribed manner”—*Meaning of—Rule prescribing specific date before which declaration forms have to be filed by the selling dealer—Validity—Central Sales Tax (Kerala) Rules, 1957, Rule 6(1), prov. 3.*—The third proviso to rule 6(1) of the Central Sales Tax (Kerala) Rules, 1957, which provides that all declaration forms pending submission by dealers on May 2, 1960, shall be submitted not later than February 16, 1961, is *ultra vires* section 8(4) read

with section 13(3) and (4) of the Central Sales Tax Act, 1956. But it is the duty of dealers to furnish the declarations in Form C within a reasonable time. Where for the year 1959-60 the assessee did not file the declarations in Form C on or before February 16, 1961, as prescribed by the third proviso to rule 6(1) of the Central Sales Tax (Kerala) Rules, 1957, but he actually filed the declaration forms on March 8, 1961, before the order of assessment was made: *Held*, that the assessee had furnished the declarations in Form C within a reasonable time and there was compliance with the requirements of section 8(4)(a) of the Act. The expression “in the prescribed manner” occurring in section 8(4) of the Central Sales Tax Act, 1956, only confers power on the rule-making authority to prescribe a rule stating what particulars are to be mentioned in the prescribed form, the nature and value of the goods sold, the parties to whom they are sold and to which authority the form is to be furnished. But it does not take in the time element. In other words, the section does not authorise the rule-making authority to prescribe a time-limit within which the declaration is to be filed by the registered dealer. Decision of the Kerala High Court in *Abraham v. Sales Tax Officer, Ponkunnam, and Others* [1964] (15 S.T.C. 110) affirmed. *Acraman v. Herniman* [1851] (117 E.R. 1164) referred to.—SALES TAX OFFICER, PUNKUNNAM, AND ANOTHER v. K. I. ABRAHAM [1967] 20 S.T.C. 367 (S.C.). The decision of the High Court in this case is as follows:—

—Sec. 8(4)—*C Forms*—“Prescribed manner” in sec. 8(4), *Central Act*—*Meaning of—Rule prescribing time—Effect—C Forms not filed within time provided by rules but filed before assessment is made—Right to concessional rate of taxation—Central Sales Tax (Kerala) Rules, 1957, Rule 6.*—The benefit or concession conferred by section 8(1) of the Central Sales Tax Act, 1956, can be taken away under section 8(4) only if the dealer failed to furnish C Forms to the prescribed authority in the prescribed manner. The dealer cannot be deprived of the benefit by enacting a rule fixing a date for furnishing the C Forms, as the expression “in the manner prescribed” in section 8(4) does not take in the time element. If therefore the C Forms were produced before the officer before the order of assessment was made, the officer had to take into consideration those Forms in passing the assessment order. Section 8(4) provided that the manner of filing the declaration in form C could be prescribed by the rules and not the time within which the same was to be filed. Therefore non-compliance with the time prescribed by rule 6 of the Central Sales Tax (Kerala) Rules, 1957, may entail other penalties but not forfeiture of the benefit conferred

by the section. *Acraman v. Herniman* (16 Q.B. 1003) relied on; *Deputy Commissioner (Commercial Taxes), Coimbatore v. Parekutti Hajee Sons* [1962] (13 S.T.C. 680) dissented from.—*ABRAHAM v. SALES TAX OFFICER, POKKUNNAM, AND OTHERS* [1964] 15 S.T.C. 110 (Ker.). On appeal to Supreme Court this decision was affirmed. See [1967] 20 S.T.C. 367 (S.C.).

—**Sec. 8—Sales to registered dealer—C Forms—Failure to furnish C Forms along with return—Effect—Power of authorities to condone delay—Central Sales Tax (Registration and Turnover) Rules, 1957—Central Sales Tax (Madras) Rules, 1957.**—The effect of the provisions of section 8 of the Central Sales Tax Act, 1956, is that where a declaration prescribed under sub-section (4) is not furnished to the prescribed authority in the prescribed manner by a dealer selling other than declared goods in the course of inter-State trade or commerce, such goods are taken out of the scope of section 8(1) and are made taxable under section 8(2). When once the failure to furnish the C Form declarations to the prescribed authority in the prescribed manner has been established, the necessary statutory result automatically follows, *viz.*, the transactions are taken outside the scope of section 8(1) and no liberty or discretion is given by any provision of the Act or the rules to tax those transactions under section 8(1). It is therefore not open to the departmental officers or the Tribunal “to excuse the delay” in the submission of the C Form declarations. When once by reason of the very provisions of the Act a particular transaction is taken out of the scope of the operation of section 8(1), a subsequent compliance with the conditions will not serve to restore the transactions to taxability under section 8(1). The assessee did not submit the C Forms along with the monthly returns in Form I of the Central Sales Tax (Madras) Rules, 1957, before the 25th of the succeeding month and he was not maintaining any register in Form 9. The assessee also did not furnish the C Forms along with the last return for the year and not even at the time when the final assessment was made by the Deputy Commercial Tax Officer: *Held*, that it was not open to the departmental officers or the Tribunal to condone the delay in the production of the C Forms.—**DEPUTY COMMISSIONER (COMMERCIAL TAXES), COIMBATORE DIVISION, COIMBATORE v. PAREKUTTI HAJEE SONS** [1962] 13 S.T.C. 680 (Mad.).

—**Sec. 8—Sales to registered dealer—Failure to produce C Forms before assessing authority—Effect—Power of assessing and appellate authorities to**

condone delay—All purposes in C Form left intact—Whether forms comply with rules—Central Sales Tax (Registration and Turnover) Rules, 1957, Rule 13.—The benefit of one per cent. under section 8(1) of the Central Sales Tax Act, 1956, is conditional upon the assessee producing and furnishing the prescribed declaration in C Form in the prescribed manner. The language of section 8(4) is express, explicit and mandatory. There is no scope for the assessee to claim the benefit of section 8(1) by producing the C Forms before the appellate authority after an assessment order against him. The Act does not confer any power upon the appellate authority to receive C Forms produced before him for the first time by the assessee by condoning the failure on the part of the assessee to produce them before the assessing authority. Non-observance of the rules by the assessee in the matter of production of C Forms will inevitably deprive the assessee of the benefit of favourable taxation under section 8(1). The non-submission of C Form will have the consequence of the assessee not obtaining the benefit of section 8(1), but cannot in any way vitiate the return or render it incomplete or defective. The decision in *Deputy Commissioner (Commercial Taxes), Coimbatore Division, Coimbatore v. Parekutti Hajee Sons* [1962] (13 S.T.C. 680) does not require reconsideration. In the case of “non-declared goods” the levy of one per cent. under section 8(1) will be attracted if the purchaser intended the goods for any one or more than one of the following purposes: (1) resale; (2) use in the manufacture or processing of goods for sale; (3) mining; (4) generation or distribution of electricity or other form of power. The statute does not restrict the applicability of section 8(1) to a sale where the purpose is only one of the four purposes set out. So long as the purchaser intends the purchase of the goods for any or all of the purposes provided for under section 8(3)(b), the benefit of section 8(1) levy can be fully availed of. There is no defect or irregularity in the C Forms produced by an assessee merely because no column relating to the “purposes” is struck out but all the columns are left intact. Such C Forms are strictly and literally in compliance with the form prescribed under the rules. It is wholly unnecessary for the assessing authority to investigate the truth or otherwise of the manifest representation made by a non-resident buyer by his keeping all the purposes set out in the form without deleting any one or more of them. Any false representation by the non-resident buyer who has signed the C Forms will expose him to grave consequences for breach of statutory provisions, but the forms as such cannot be condemned and put aside to defeat the

seller's right and claim of taxation under section 8(1) of the Act. Where the C Form does not mention the date of registration, the transaction would attract tax only at the rate of 7 per cent. under section 8(2).—DEPUTY COMMISSIONER OF COMMERCIAL TAXES, MADRAS DIVISION *v.* MANOHAR BROTHERS [1962] 13 S.T.C. 686 (Mad.).

—**Sec. 8—Assessment—Filing of C Forms—Receipt of C Forms after making assessment order—Whether delay can be condoned—When order becomes effective—Whether order should be communicated to assessee—Central Sales Tax (Kerala) Rules, 1957, Rule 6(5).**—The assessee submitted a return under the Central Sales Tax Act, 1956, and he was served with a notice on 27th January, 1959, stating that he would be taxed on a certain turnover at the enhanced rate if objections were not filed and accounts were not produced on 31st January, 1959. The assessee did not ask for adjournments and did not file the C Forms on or before 31st January, 1959. The assessment order made was dated 31st January, 1959, and it was despatched to the assessee on 14th February, 1959, and delivered to him on 18th February, 1959. The assessee stated that he had sent his objections on 30th January, 1959, and had also requested the officer to grant him time to file the C Forms and that prior to the receipt of the assessment order he had sent the C Forms, which were received by the officer on 17th February, 1959. The Appellate Tribunal held that the delay in filing the C Forms should be condoned and directed the officer to make a fresh assessment. On revision: *Held*, that the Appellate Tribunal erred in condoning the delay and directing the officer to make a fresh assessment. *State of Kerala v. N.K. Thomas* (T.R.C. 1 of 1960 decided on June 12, 1961) distinguished.—DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX *v.* A. M. ABDUL WASIGH & BROS. [1962] 13 S.T.C. 295 (Ker.).

—**Sec. 8—Assessment—C Forms—Filing of defective forms along with monthly returns—Request for production before appellate officer and Tribunal new forms complying with provisions—Whether can be granted—Central Sales Tax (Kerala) Rules, 1957, Rule 11(1), proviso.**—The assessee had filed, along with his monthly returns under the Central Sales Tax Act, 1956, C Forms which did not comply with the proviso to rule 11(1) of the Central Sales Tax (Kerala) Rules, 1957, but no objection was raised by the Sales Tax Officer at that time. Before making the assessment order, the defect was pointed out by the Sales Tax Officer but the assessee urged that the forms were in order. In appeal the assessee specifically requested the

Appellate Assistant Commissioner to grant him time to produce new declaration forms in accordance with the proviso to rule 11(1) but this request was rejected by the officer. The request for an opportunity to produce new C Forms was also not entertained by the Sales Tax Appellate Tribunal. The assessee produced new C Forms in accordance with the proviso to rule 11(1) before the High Court: *Held*, that this was a case in which the Appellate Assistant Commissioner and the Tribunal should have excused the delay in the production of C Forms conforming to the proviso to rule 11(1).—PALANIAPPA MATCH WORKS *v.* THE STATE OF KERALA [1962] 13 S.T.C. 904 (Ker.).

—Prescribing a period for the submission of the declaration in Form C is comprehended within the expression "prescribed manner" in section 8(4) of the Central Sales Tax Act, 1956. The manner in which the declaration should be furnished would include the time within which it should be furnished. Moreover fixing a time-limit for the submission of Form C is to carry out the purpose of the Act within the meaning of section 13(3) of the Central Sales Tax Act, 1956. Therefore in framing rule 14-A of the Central Sales Tax (Andhra Pradesh) Rules, 1957, with the proviso, the Government was well within its rights in prescribing a period for furnishing the declaration.—EAST INDIA SANDAL OIL DISTILLERIES LTD. AND OTHERS *v.* THE STATE OF ANDHRA PRADESH [1962] 13 S.T.C. 79 (A.P.).

—**Secs. 8, 13—Inter-State sales—C Forms—Rule prescribing time-limit for filing—Validity—C Forms filed before assessment—Whether filed in time—Appeal by assessee—Appellate Officer finding defects in C Forms—Power of officer to receive rectified C Forms—Applicability of proviso to rule 10(1), Madras Rules to Kerala dealer—Central Sales Tax (Madras) Rules, 1957, Rules 5, 10.**—Rule 5(1) of the Central Sales Tax (Madras) Rules, 1957, in so far as it prescribes a time-limit for filing declarations in Form C is invalid as being in excess of the rule-making power of the State Government. Normally the declarations in the prescribed form and in the prescribed manner should be filed within a reasonable time. But what will be "reasonable time" in a given case will depend on particular circumstances, and if defects in the C Form are known before assessment is made, but still the assessee failed to furnish the correct particulars in spite of reasonable time being given to him before assessment is completed, it may be a case for application of the higher rate of tax. But even here one cannot lay it down as a rule of law, for circumstances may exist which

may justify extension of the scope of "reasonable time". In respect of two sales to a purchaser in the State of Kerala the assessee filed a single declaration in Form C before the assessing authority along with the connected monthly return. But when the assessing authority indicated to the assessee that the declaration was not in compliance with the proviso to rule 10(1) of the Central Sales Tax (Madras) Rules, 1957, the assessee obtained fresh but separate declarations in C Form for each of the two sales and tendered them to the officer, before he completed the assessment. The assessing authority was of the view that he had no power to condone the delay in filing the declarations and therefore the assessee was liable to the higher rate of tax: *Held*, that as the declarations complying with the proviso to rule 10(1) were filed before the assessment order was made, they must be said to have been filed within time. Apart from that, the declarations as they were first filed before the assessing authority were in order, because the proviso to rule 10(1) in the context could apply only to a purchasing dealer within the State of Madras and not to a dealer in the State of Kerala. There is no provision in the Central Sales Tax Act, 1956, or the rules made thereunder for deduction of excise duty from the chargeable turnover. In an appeal filed by the assessee against the assessment order the Appellate Assistant Commissioner found that three C Forms, covering a certain turnover for which the assessing authority had charged at the lower rate of tax, were defective in that in all of them the registration number and the date of registration of the out-of-State purchasing dealer were not given, and in one case the value of the goods sold as noted in the C Form differed from the relative invoice. While the Appellate Assistant Commissioner gave the assessee an opportunity to show cause why the higher rate of tax should not be applied and the assessee furnished to him particulars rectifying the defects in the C Forms filed before the assessing authority, the Appellate Assistant Commissioner declined to accept them, as coming out of time, and charged the assessee at the higher rate of tax on the turnover covered by the three C Forms: *Held*, that the fresh particulars furnished before the Appellate Assistant Commissioner, which rectified the defects in the C Forms filed before the assessing authority, should have been received, and if they were found to be in order, the Appellate Assistant Commissioner should have confirmed the original order of the assessing authority applying the lower rate of tax. Principles of natural justice would require that, when something is discovered at the appellate stage

which exposed the assessee to a higher rate of tax, the assessee should be given an opportunity to rectify the defects within a stipulated time granted for that purpose. *Sales Tax Officer, Ponkunnam v. K. I. Abraham* [1967] (20 S.T.C. 367) applied. *State of Madras v. R. Nand Lal & Co.* [1967] (20 S.T.C. 374) followed.—*THE TIRUKOILUR OIL MILLS LTD. AND ANOTHER v. THE STATE OF MADRAS* [1967] 20 S.T.C. 388 (Mad.).

—**Secs. 8, 13—Declaration in C Forms—C Forms lost in transit—Photostat copy of counterfoil produced before appellate authority—Duty to consider whether C Forms were filed within reasonable time—Central Sales Tax (Madras) Rules, 1957, Rules 5, 10.**—The declaration in C Form issued by the out-of-State purchasing dealer was lost in transit by the bank through whom the documents were negotiated, and in spite of time given by the assessing authority, the assessee could not produce it before the assessment was completed. The assessee however obtained a photostat copy of the counterfoil of the declaration in C Form issued by the purchasing dealer and produced the same before the Appellate Assistant Commissioner, who did not accept it: *Held*, that the declaration in C Form should only be filed within a reasonable time. If the delay in getting a duplicate form was explained or if a counterfoil of the C Form was produced, either in the form of its original or of a photostat copy which was as authentic, the Appellate Assistant Commissioner might consider whether it was not filed within a reasonable time. *Tirukoilur Oil Mills Ltd. v. The State of Madras* [1967] (20 S.T.C. 388) followed.—*SHANSSHIA OIL MILLS v. THE STATE OF MADRAS* [1967] 20 S.T.C. 481 (Mad.).

—**Secs. 8, 13—Declaration in C Form—"Prescribed manner" in section 8(4), Central Sales Tax Act, 1956—Meaning of—Rule fixing time-limit for filing C Forms—Validity—Central Sales Tax (U.P.) Rules, 1957.**—The words "prescribed manner" in section 8(4) of the Central Sales Tax Act, 1956, do not give the State Government any authority to fix a time-limit for filing the C Forms. It may be open to the State Government under sec. 13(5) to make rules for providing a penalty for breach of the rules but it is not possible to deprive the holder of the benefit provided under section 8(1) by fixing a rigid rule of limitation within which the C Forms must be produced. Therefore the provision in the Central Sales Tax (U.P.) Rules, 1957, fixing a time-limit for filing the C Forms is *ultra vires* the State Government. *Abraham v. Sales Tax Officer, Ponkunnam, and Others* [1964] (15 S.T.C. 110) followed. *The State of Kerala v. M. Appukutty* [1963] (14 S.T.C. 242) and *M. A. &*

Company v. Assistant Commissioner (Judicial) Sales Tax, Farrukhabad, and Another [1964] (15 S.T.C. 487) distinguished.—*MURLI DHAR DHARAMPAL DARESI v. THE SALES TAX OFFICER, AGRA* [1965] 16 S.T.C. 21 (All.).

—**Secs. 8, 9—Declaration in C Form**—“*In the prescribed manner*” in section 8(4), Central Act—*Meaning of*—Rule 8(2), Madhya Pradesh Sales Tax (Central) Rules, 1957—*Validity—Production of declaration after assessment before higher authorities—Whether sufficient*.—The words “in the prescribed manner” used in sub-section (4) of section 8 of the Central Sales Tax Act, 1956, only empowered the Government to lay down by rules the manner of filing a declaration in Form C and not the time within which it is to be filed. Therefore rule 8(2) of the Madhya Pradesh Sales Tax (Central) Rules, 1957, in so far as it lays down that the declaration must be attached to the return is not valid. In any case, it cannot be construed as having a mandatory force so as to deprive the dealer of the benefit of the rate of tax under section 8(1) if he omits to attach to his return the declaration but files it before the assessment. It is however implicit in sec. 8(4) that for claiming the benefit of the rate of tax prescribed by section 8(1) the declaration must be produced before the taxing authority and before the assessment. Production of declaration forms before higher officers after assessment is of no avail.—*K. M. CHOPRA AND COMPANY v. THE ADDITIONAL COMMISSIONER OF SALES TAX, MADHYA PRADESH, INDORE, AND OTHERS* [1967] 19 S.T.C. 46 (M.P.).

—**Sec. 8—C Forms—Cost price of goods alone mentioned in C Forms—Bill mentioning separately cost price, freight and delivery charges—Whether C Forms defective—Right to concessional rate of tax**.—Where in respect of certain inter-State sales, the bills prepared by the assessee showed separately the f.o.b. and shipping charges in addition to the cost price of the goods, but the C Form declarations issued by the purchasing dealer mentioned only the cost price of the goods: *Held*, that the f.o.b. and shipping charges would not form part of the sale consideration and their non-inclusion in the C Form declarations was not a defect which would justify the rejection of the claim to the concessional rate of tax under section 8(1) of the Central Sales Tax Act, 1956.—*S. RENGASWAMI NADAR AND Co. v. THE STATE OF MADRAS* [1963] 14 S.T.C. 668 (Mad.).

—**Secs. 8(1), (4), 13(1)(d), (3), (4)—Form C—Dealer in Madras effecting sales to dealer in Punjab—Declaration in Form C produced by Madras dealer covering more transactions of sale than one—Whether defective—Whether contravenes Madras**

Rules—Authority to prescribe that single declaration covering more than one transaction shall not be made—Whether rests in Central Government or State Government—Central Sales Tax (Madras) Rules, 1957, Rule 10(1), first proviso.—The assessee, a dealer in wool at Vaniyambadi in the State of Madras, effected sales to registered dealers in the State of Punjab and submitted declarations in Form C furnished by the dealers in Punjab. Each such declaration covered more transactions of sale than one and the aggregate value of the transactions recorded in each declaration exceeded Rs. 5,000. The question was whether the Sales Tax Authorities in Madras could assess the assessee at 7 per cent., rejecting the declarations furnished on the ground that they contravened the provisions of rule 10 of the Central Sales Tax (Madras) Rules, 1957: *Held*, that the Central Sales Tax (Madras) Rules, 1957, framed by the Madras Government were intended to apply to dealers within the State of Madras. Under the scheme of the Central Sales Tax Act and the Rules framed under that Act by the State of Madras, the injunctions against the purchasing dealers in rule 10(1) of the Central Sales Tax (Madras) Rules, 1957, did not apply to dealers in the State of Punjab. Since rule 10(1) requiring that separate declaration forms in respect of each individual transaction should be furnished was intended only to apply to dealers in the State of Madras, and not to dealers outside the State, the proviso to rule 10(1) which directed that no single declaration should cover more than one transaction of sale except in certain cases, had no application to a purchasing dealer outside the State of Madras. The declarations furnished by the assessee were therefore not defective and the assessee was liable to pay tax on the turnover in dispute only at 1 per cent. as prescribed by section 8(1) of the Central Sales Tax Act, 1956, and not at the rate of 7 per cent. Authority to prescribe that a single declaration covering more than one transaction shall not be made cannot have its source in section 13(3) or section 13(4)(e) of the Central Sales Tax Act, 1956: it can only be in the authority conferred by section 13(1)(d) on the Central Government, and the State Government cannot exercise that authority. Decision of the Madras High Court in *R. Nandalal & Co. v. The Government of Madras* [1965] (16 S.T.C. 1) affirmed.—*THE STATE OF MADRAS v. R. NAND LAL AND Co.* [1967] 20 S.T.C. 374 (S.C.). The decision of the High Court in this case is as follows:—

—**Sec. 8—C Forms—Applicability of Madras Rules to Punjab purchasing dealer—Separate C Form for each sale transaction not furnished—**

Whether lower rate of assessment can be denied to selling Madras dealer—Central Sales Tax (Madras) Rules, 1957, Rule 10.—Rule 10(1) of the Central Sales Tax (Madras) Rules, 1957, will only apply to registered purchasing dealers in the Madras State. Therefore where a registered dealer in the Madras State sold goods to a registered dealer in the Punjab State and the selling dealer is found to have complied with the essential requirement both under the Act as well as the rules framed thereunder in the matter of supply of C Forms, the failure to comply with the condition in the Madras rules relating to the furnishing of separate C Form for each sale transaction, which is not found in the Punjab rules, cannot be a ground for denying the benefit of the lower rate of assessment to the selling dealer.—*R. NANDALAL AND CO. v. THE GOVERNMENT OF MADRAS* [1965] 16 S.T.C. 1 (Mad.). Affirmed on appeal to Supreme Court. See [1967] 20 S.T.C. 374 (S.C.).

—*Secs. 8(1), (4), 13(1) (d), (3), (4)—Declaration in Form C—Rules made by State Government—Provision that single declaration covering more than one transaction of sale shall not be made—Whether enforceable—Madhya Pradesh Sales Tax (Central) Rules, 1957, Rule 8(1).*—The proviso to rule 8(1) of the Madhya Pradesh Sales Tax (Central) Rules, 1957, which provides “that no single declaration shall cover more than one transaction of sale, except in cases where the total amount covered by one declaration is equal to or less than Rs. 5,000 or such other amount as the Commissioner may, by general order, notify in the Official Gazette” is unenforceable. *State of Madras v. R. Nand Lal & Co.* [1967] (20 S.T.C. 374)(S.C.) followed.—*COMMISSIONER OF SALES TAX, MADHYA PRADESH, INDORE v. GIRJA PRASAD SUNDERLAL OF SATNA* [1968] 21 S.T.C. 360 (M.P.).

—*Secs. 8, 13—Declaration in Form ‘C’—Rule 7(2A), Central Sales Tax (Punjab) Rules, 1957—Whether ultra vires the powers of State Government.*—Rule 7(2A) of the Central Sales Tax (Punjab) Rules, 1957, which provides that “no single declaration in Form ‘C’ prescribed under the Central Sales Tax (Registration and Turnover) Rules, 1957, shall cover more than one transaction of sale except when the total amount of sales does not exceed five thousand rupees” is not *ultra vires* the powers of the State Government. This rule, both in substance and form, is within the purview of the power given to the State Government and is consistent with the Central Act as well as the rules made by the Central Government thereunder.—*BALLIMAL NAWALKISHORE v. THE ASSESSING AUTHORITY AND ANOTHER* [1966] 17 S.T.C. 185 (Punj.).

—*Sec. 8(1), (4)—Declaration in Form C—Necessity to satisfy all conditions of rule 9-A, Central Sales Tax (Andhra Pradesh) Rules, 1957, to claim concessional rate of tax.*—Rule 9-A of the Central Sales Tax (Andhra Pradesh) Rules, 1957, provided as follows:—“A registered dealer who purchases goods in the course of inter-State trade or commerce may issue a single declaration form to cover two or more such purchases provided that (i) all such purchases are made from the same dealer, (ii) the turnover of all the purchases so made does not exceed Rs. 5,000 and (iii) all such purchases relate to the same assessment year”: *Held*, that the rule is applicable to inter-State transactions and that if the declaration forms produced by the selling dealer do not satisfy any of the conditions prescribed by the rule, he will not be entitled to the concessional rate of tax provided under section 8(1) of the Central Sales Tax Act, 1956. *R. Nandalal and Co. v. The Government of Madras* [1965] (16 S.T.C. 1) distinguished.—*P. V. SUBRAHMANYAM & Co. v. THE BOARD OF REVENUE (C.T.), ANDHRA PRADESH* [1967] 19 S.T.C. 113 (A.P.).

—*Sec. 8 (2)—“Sale” in section 8(2), Central Act—Whether includes “purchase”—Effect of subsequent amendment—Interpretation of fiscal statutes.*—The word “sale” in the unamended section 8(2) of the Central Sales Tax Act, 1956, covers transactions of purchase as well. The amendment of the Act by which the words “or purchase” were introduced in section 8(2) was the result of an anxiety on the part of the Legislature to obviate an argument that the word “sale” does not include “purchase”. Section 8(2) does not provide for the incidence of tax. It provides only the rate at which tax is to be levied on transactions involving inter-State elements. All fiscal statutes have to be construed strictly and the incidence of tax liability cannot be inferred by analogy or by trying to probe into the intentions of the Legislature.—*KHIMJI VISHRAM AND CO. v. STATE OF ANDHRA PRADESH* [1962] 13 S.T.C. 779 (A.P.).

—*Sec. 8(2A)—Rice obtained from paddy subjected to tax and rice not so obtained taxed at different rates under Andhra Pradesh Act—Rate of tax on inter-State sales of rice—“Subject to tax generally”—Meaning of—Interpretation of statutes when there are two possible constructions—Andhra Pradesh General Sales Tax Act (6 of 1957), Sec. 5(2)(a), Sch. I, item 66.*—Under item 66(b) of the First Schedule to the Andhra Pradesh General Sales Tax Act, 1957, rice obtained from paddy that had suffered tax at 3 per cent. was taxable at 1 per cent., while under item 66(a) rice that was not so obtained was taxable at 4 per cent. Section 8(2A) of the Central Sales Tax Act,

1956, provided that if under the local sales tax law the sale of any goods was subject to tax generally at a rate lower than 2 per cent., the tax payable on inter-State sales of such goods was such lower rate. The assessee contended that inter-State sales of rice was liable to tax at the rate of 1 per cent. only, but the department was of the view that as rice was subject to tax generally at 4 per cent. under the Andhra Pradesh Act, the proper rate on inter-State sales of rice was 2 per cent. The Tribunal accepted the plea of the assessee and remanded the appeals to the assessing authority to determine whether the rice turnover was the yield from paddy that had already suffered tax or not. On revision preferred by the department: *Held*, that rice from paddy which had not been subjected to tax and rice from paddy which had already been subjected to tax had to be taxed at different rates and with respect to each category tax could be said to be generally at that rate. The words "subject to tax generally" in section 8(2A) of the Central Act did not exclude from the purview rice obtained from paddy that had already been subjected to tax at 3 per cent. under the Andhra Pradesh Act. Hence by virtue of section 8(2A) of the Central Act read with item 66(b) of Schedule I of the Andhra Pradesh Act, inter-State sales of rice obtained from paddy that had already suffered tax at 3 per cent. was exigible to tax at 1 per cent. and not at 2 per cent. Where two interpretations are possible, one against the constitutionality of a provision and the other in favour of sustaining it, the latter interpretation has to be preferred. *Karnatak Coffee Company v. Commercial Tax Officer, Davanagere* [1962] (13 S.T.C. 658), *State of Mysore v. Karnatak Coffee Co.* [1966] (17 S.T.C. 311) and *State of Mysore v. Yaddalam Lakshminarasimhaiah Setty and Sons* [1965] (16 S.T.C. 231) relied on.—THE STATE OF ANDHRA PRADESH *v.* ORUGANTI VENKATESWARLU & BROS. AND OTHERS [1967] 20 S.T.C. 340 (A.P.).

—SECS. 8(2A), 9—*Manufacture—Glass bangles—Reassessment under Central Sales Tax Act—Import of glass bangles and sale after painting liquid gold on them—Liability as importer and as manufacturer—Manufacture—Meaning of—Scope of notification—When officer can issue notice under section 21—Reason to believe—Meaning of—Irrregularity in issuing notice—Whether renders it invalid—U.P. Sales Tax Act (15 of 1948), Sec. 21*—By Notification No. St-1365/X-990-1956 dated 1st April, 1960, the State Government specified that the turnover of glass bangles was to be liable to tax at a single point; where the glass bangles were imported from a manufacturer outside U.P., the point of

tax would be the sale by the importer, and where the glass bangles were manufactured within U.P., the point of tax would be the sale by the manufacturer. The petitioner-firm, dealing in glass bangles, sold some of the bangles purchased by it from the manufacturers in the same condition, and sold the others after painting them with liquid gold. The petitioner was assessed to sales tax under the Central Sales Tax Act, 1956, for the assessment year 1960-61. In the year 1965, the petitioner was served with a notice stating that a part of the turnover for that assessment year had escaped assessment and it was asked to furnish a return of its entire turnover and to produce its account books. The petitioner furnished certain information and subsequently filed a petition for *certiorari* for quashing the notice and raised the following contentions: (1) The notice was invalid because *ex facie* it appeared to be a notice under the U.P. Sales Tax Act, 1948, and, therefore, could not serve as a notice for initiating reassessment proceedings by virtue of the Central Sales Tax Act; (2) The petitioner was not liable to assessment of Central sales tax because of section 8; (3) The levy could not be justified by reference to section 9 of the Central Sales Tax Act; (4) The glass bangles sold by the petitioner were the very same articles purchased by it from the manufacturer and no part of the glass bangles sold could be said to have been manufactured by the petitioner: *Held*, (1) that an article belonging to any of the classes of goods enumerated in the notification may by a subsequent process be manufactured into another article, the latter article, however, still belonging to the same class as the original article. If the first article has been imported from outside Uttar Pradesh, its sale will attract sales tax at the point of sale by the importer. If the second article has been manufactured from the first article in Uttar Pradesh, its sale will attract sales tax at the point of sale by the manufacturer; (2) that whether an article is converted by manufacture into a different article depends upon several criteria, and one of the essential tests is whether in a commercial sense the original article has ceased to exist and a new article has taken its place. The question whether an article has been converted into a commercially different article is a question essentially of fact and one which appropriately falls for consideration before the Sales Tax Officer. Evidence should therefore be led in before that officer for the purpose of showing that the article sold by the petitioner was not commercially different from the article purchased by it; (3) that so long

as the Sales Tax Officer had reason to believe that the turnover or part of it had escaped assessment, he had jurisdiction to issue the notice. He must *bona fide* have reason for that belief, and there must be material upon which he came to that belief. He must act reasonably and without arbitrariness. The belief that the turnover or part of it had escaped assessment might turn out to be erroneous, and might be discovered to be so during the subsequent assessment proceedings, but if there was material before him which could reasonably lead him to that belief it could not be said that the notice was invalid; (4) that the contention that no sales tax could be imposed against the petitioner by reason of section 8(2A) and section 9 of the Central Sales Tax Act, 1956, belonged to the domain of assessment proceedings pending before the Sales Tax Officer and could not be considered in a petition for *certiorari*; (5) that whether the notice issued under section 21 was invalid would depend on whether it succeeded in the purpose for which it was issued. The notice was intended to inform the assessee of the proposed action by the assessing authority and also to inform him clearly as to what was required of him. If the assessee had no difficulty in understanding the purpose of the notice its validity could not successfully be impugned; (6) that although the notice mentioned at the top that it was under section 21 of the U.P. Sales Tax Act, 1948, in the circumstances of the case, it was not invalid.—PAWANSUT BANGLE STORES, FIROZABAD v. ASSISTANT SALES TAX OFFICER, FIROZABAD, AND ANOTHER [1966] 18 S.T.C. 87 (All.).

—Secs. 8(2A), 9—*Last purchase alone liable under State Act—Liability to tax on subsequent inter-State sale—Writ petition for refund of tax paid under mistake of law—Maintainability—Limitation—General Sales Tax Act (11 of 1125).*—Where under the Schedule to the General Sales Tax Act, 1125, the turnover of hill produce was taxable only at the last purchase point within the State, a last purchaser of hill produce within the State who had paid the tax when he purchased the goods would not be liable to pay tax on the turnover of sales under the Central Sales Tax Act, 1956, when he subsequently sold the goods in inter-State sale. A petition under Article 226 of the Constitution for refund of tax paid under a mistake of law is maintainable but the petition must be filed within three years from the date when the mistake becomes known to the petitioner.—V. MOHAMMED ISMAIL ROWTHER v. THE SALES TAX OFFICER, ADOOR, AND ANOTHER [1968] 22 S.T.C. 410 (Ker.). [The assessee's turnover of hill produce in this case related to the years 1959-60 to 1962-63 and 1965-66.]

—Secs. 8(2A), 9—*Exemption—Single point tax—Transactions not liable to be taxed under State Act—Whether assessable under Central Act—Scope of sections 8(2A) and 9—Watery coconuts—Whether chargeable to tax only on first sale during period August-September, 1966—Whether second sale of watery coconuts liable to tax under Central Act—Andhra Pradesh General Sales Tax (Second Amendment) Act (18 of 1966)—Stage of levy on coconuts during different periods stated.*—Section 8 of the Central Sales Tax Act, 1956, has nothing to do with the levy and collection of tax but only with the rate at which tax is to be collected if a transaction attracts the levy, but where the transaction itself does not attract the levy there is no question of it being taxed at any particular rate. Section 9 deals with the levy of tax and it clearly lays down that the levy under the Central Act is referable to the levy under the State Act, so that if under a State Act, the levy has to be made in a particular manner, the levy under the Central Act has also to be made in the same manner. Therefore whatever is taxable under the State Act alone is taxable under the Central Act, so that if under the Andhra Pradesh General Sales Tax Act a transaction of sale cannot be taxed, a similar inter-State sale transaction cannot also be taxed under the Central Sales Tax Act. The assessee purchased watery coconuts from registered dealers in the State and exported them to other States during the period August-September, 1966. The assessee claimed that these transactions were not liable to be taxed under the Central Sales Tax Act, 1956, inasmuch as under the Andhra Pradesh General Sales Tax Act, 1957, watery coconuts during the period August-September, 1966, were liable to tax only at the first sale point: *Held*, (1) that during the period 1st April, 1965, to the date when the Andhra Pradesh General Sales Tax (Second Amendment) Act (18 of 1966) came into force, i.e., 23rd December, 1966, tax on watery coconuts was at first sale point in accordance with G.O.Ms. No. 608 dated 29th April, 1965, read with section 5. The addition of item 10 in Schedule II to the Act by the Amendment Act had prospective effect only and did not affect the period between 1st April, 1965, and 23rd December, 1966, though the Amendment Act had limited retrospective effect for the period 1st August, 1963, to 31st March, 1965: (2) that as under the State Act, during the period August-September, 1966, levy on watery coconuts had to be made only on the first sale point, tax under the Central Sales Tax Act, 1956, could not be levied on any subsequent sales. *State of Mysore v. Lakshminarasimhiah Setty and Sons* [1965] (16 S.T.C. 231) applied. *Sri Krishna Coconut Co. v. Commercial Tax Officer, Amalapuram*

[1965] (16 S.T.C. 511) referred to.—*SRI KRISHNA COCONUT COMPANY, AMBAJIPET v. COMMERCIAL TAX OFFICER, AMALAPURAM* [1968] 22 S.T.C. 404 (A.P.).

—**Sec. 8(4) — Registration under Central Act — Sale inside State — Sale of goods in respect of which declaration is furnished under section 8(4), Central Act — Liability to tax even if turnover is less than Rs. 7,500 — Mysore Sales Tax Act (25 of 1957), Sec. 5(2).**—The clause “in respect of which he has furnished a declaration under sub-section (4) of section 8 of the Central Sales Tax Act, 1956” in section 5(2) of the Mysore Sales Tax Act, 1957, should not be attached to the sale mentioned in that sub-section. Therefore when a dealer in Mysore State purchases goods in the course of inter-State trade, makes a declaration under section 8(4) of the Central Act, in connection with such purchase, and subsequently sells those goods in the Mysore State, he is bound to pay tax on the sales made by him within the State irrespective of whether his turnover is less or more than Rs. 7,500.—*MRS. KESARBAI v. COMMISSIONER OF COMMERCIAL TAXES, BANGALORE* [1967] 20 S.T.C. 364 (Mys.).

—**Secs. 8, 9, 15 — Single point taxation — Declared goods — Assessment under Central Act — Inter-State sales not taxable if it were intra-State sales — Liability to taxation under Central Act — Effect of amendments in 1958 — Deduction of excise duty from taxable turnover — Madras General Sales Tax Act (1 of 1959), Secs. 4, 6.**—The assessee, registered dealers in hides and skins, purchased during the assessment years 1958-59 to 1961-62, tanned hides and skins from local dealers and sold them on consignment basis by lorry or train to dealers outside the State. These inter-State sales were assessed to sales tax under the Central Sales Tax Act, 1956, by the department. Subsequently relying on the decision of the Supreme Court in *State of Mysore v. Lakshminarasimhaiah Setty and Sons* [1965] (16 S.T.C. 231) the assessee claimed that as the last sales of hides and skins were not taxable under the State Act, the inter-State sales of such hides and skins were also not taxable and filed a petition under Article 226 of the Constitution for a refund of the tax collected from them by a mistake of law on these inter-State sales: *Held*, (1) that the Supreme Court was concerned with an assessment for the year 1957-58 under the Central Sales Tax Act, 1956, as it stood prior to the amendments in 1958 and therefore the decision had no application to the facts of the case and the relative provisions of the law governing them; (2) taking that “levied” in section 9(1) and (2) of the Central Act is related to the levy under the State Act, the levy under the State

Act in the light of the amended provisions is subject to the limitation that it is liable to be refunded in case there is a levy of tax on inter-State sales of the same goods under the Central Act. Therefore having regard to the special provisions under the Madras General Sales Tax Act, 1959, and section 15 as in force after the amendment in 1958, the charge under the Central Act was valid and the tax paid pursuant to it was not liable to be refunded; (3) the single point scheme of taxation cannot be taken in the abstract but has to be understood in the light of the statutory provisions both in the Central Act as well as the State Act. Under the present scheme of taxation, so far as goods mentioned in Schedule 1 of the Madras General Sales Tax Act, 1959, are concerned, their sales are liable to levy both under the State Act as well as the Central Act. But in the case of declared goods mentioned in Schedule 2, though levies may be made under both the Acts, the levy under the State Act is liable to be refunded. The assessee, in another case, contended that as the word “levied” in section 9(2) of the Central Act meant levied under the State Act, the benefit of rule 6(f) of the Madras General Sales Tax Rules, 1959, relating to the deduction of excise duty from the taxable turnover should be given to them when they were assessed to tax on their inter-State sales: *Held*, that as the Rules framed under the Central Act did not provide for such deduction in determining the aggregate turnover of inter-State sales, the assessee were not entitled to the deduction of excise duty.—*M. A. KHADER & CO. AND OTHERS v. THE STATE OF MADRAS AND OTHERS* [1966] 17 S.T.C. 396 (Mad.).

—**Sec. 9(1) — Excise duty — Whether has to be included in turnover for purposes of Central sales tax.**—In the matter of determining the taxable turnover the same rules will apply by virtue of section 9(1) of the Central Sales Tax Act, whether the tax is to be levied under the Central Sales Tax Act or the General Sales Tax Act. If under the Madras General Sales Tax Act, in computing the turnover, excise duty is not liable to be included and by virtue of section 9(1) of the Central Sales Tax Act, Central sales tax has to be levied in the same manner as under the Madras Act, the excise duty will not be liable to be included in the turnover for the purposes of Central sales tax.—*THE STATE OF MADRAS v. N. K. NATARAJA MUDALIAR* [1968] 22 S.T.C. 376 (S.C.).

—**Sec. 9(3) — Assessment under Central Sales Tax Act — Excise duty paid to Central Government and collected from buyers — Whether part of sale price — Liability to tax — “In the same manner” in section 9(3) — Meaning of — General Sales Tax Rules,**

1950 (Kerala), Rule 7(1).—In respect of the period of assessment 1st July, 1957, to 13th December, 1957, the excise duty paid to the Central Government by a dealer and collected from his customers is part of the consideration for the sale of the goods and is assessable to tax under the Central Sales Tax Act, 1956, even though it has been separately charged in the bills issued to the customers. The words "in the same manner" in section 9(3) of the Central Sales Tax Act, 1956, will not attract rule 7(1) of the General Sales Tax Rules, 1950, to permit the exclusion of the excise duty collected by the dealer. *S. Mariappa Nadar and Others v. The State of Madras* [1962] (13 S.T.C. 371) followed.—*PARVATHI MILLS (PRIVATE) LTD. v. THE STATE OF KERALA* [1962] 13 S.T.C. 927 (Ker.).

—**Sec. 9(3)—Excise duty—Deduction—Assessment under section 8, Central Sales Tax Act, 1956—Excise duty paid—Whether can be deducted—“In the same manner” in section 9(3)—Meaning of—Central Sales Tax (Registration and Turnover) Rules, 1957, Rule 11.**—An assessee assessed to sales tax under section 8 of the Central Sales Tax Act, 1956, for the assessment year 1958-59 is not entitled to deduct from his turnover the excise duty paid by him on the goods sold by him during the assessment year. The phrase "in the same manner" in section 9(3) does not make applicable all the incidents of the local sales tax law to the assessment under the Central Sales Tax Act. What is contemplated by that phrase is that the procedure of making an assessment and collection of tax is the same as in the local Sales Tax Act. *S. Mariappa Nadar and Others v. The State of Madras* [1962] (13 S.T.C. 371) and *Parvathi Mills (Private) Ltd. v. The State of Kerala* [1962] (13 S.T.C. 927) relied on. *Mysore Silk House v. The State of Mysore* [1962] (13 S.T.C. 597), *K. V. Adinarayana Setty v. Commercial Tax Officer, Kolar Circle, Kolar* [1963] (14 S.T.C. 587), *P. K. P. Abdul Harkeen Sahib v. Mysore Sales Tax Appellate Tribunal, Bangalore, and Others* [1963] (14 S.T.C. 578), *C. S. Nagaraja Setty and Another v. Deputy Commissioner of Commercial Taxes, City Division, Bangalore, and Another* [1962] (13 S.T.C. 578) and *Yadalam Lakshminarasimhiah Setty & Sons v. State of Mysore* [1962] (13 S.T.C. 583) distinguished.—*THE STATE OF MYSORE AND ANOTHER v. MYSORE PAPER MILLS LTD.* [1964] 15 S.T.C. 176 (Mys.).

—See also *MARIAPPA NADAR's case* [1962] 13 S.T.C. 371 (Mad.), *LARSEN AND TOUBRO LTD., case* [1967] 20 S.T.C. 150 (Mad.) and *NATARAJA MUDALIAR's case* [1968] 22 S.T.C. 376 (S.C.).

—**Sec. 9—Excise duty—Deduction—Assessment under section 8, Central Act—Excise duty paid—**

Whether can be deducted.—Under the General Sales Tax Act, 1125, turnover by virtue of the definition in section 2(k) means the aggregate amount for which goods are bought or sold by a dealer and by virtue of rule 7 of the General Sales Tax Rules, 1950, the amount of excise duty paid by the dealer to the State or to the Central Government has to be deducted. Under section 9(1) of the Central Sales Tax Act, 1956, the tax payable by a dealer under that Act has to be levied and collected in the appropriate State by the Government of India in the manner provided in sub-section (2); and sub-section (2) of section 9 empowers payment of any tax payable by any dealer under the Central Act in the same manner as the tax on the sale or purchase of goods under the general sales tax law of the State is assessed, paid and collected. Therefore in fixing the turnover of an assessee for imposing tax on him under section 8 of the Central Sales Tax Act, 1956, the turnover represented by the excise duty paid by him should be deducted. *State of Mysore v. Yaddalam Lahshminarasimhiah Setty and Sons* [1965] (16 S.T.C. 231) followed. *S. Mariappa Nadar and Others v. The State of Madras* [1962] (13 S.T.C. 371), *Parvathi Mills (Private) Ltd. v. The State of Kerala* [1962] (13 S.T.C. 927) and *The State of Mysore and Another v. Mysore Paper Mills Ltd.* [1964] (15 S.T.C. 176) dissented from.—*POTHEN JOSEPH AND SONS v. STATE OF KERALA* [1967] 19 S.T.C. 123 (Ker.).

—**Secs. 9(3), 16—Escaped turnover—Reassessment—Rule making power—Validity of rule 5(7), Central Sales Tax (Madras) Rules, 1957—Power of officer to assess escaped turnover under section 9(3), Central Act—Parliament—Legislation by reference and adoption of State law—Nature of power.**—Sub-rule (7) of rule 5 of the Central Sales Tax (Madras) Rules, 1957, at least in so far as it provided for limitation and determination of escaped turnover by best judgment is in excess of the rule-making power and the sub-rule, as a whole, is therefore invalid. But section 9(3) of the Central Sales Tax Act, 1956, would enable the officer to invoke those powers which he has under the Madras General Sales Tax Act, 1959, in assessing turnover which has escaped assessment in any year. While it is competent for the Parliament to adopt the existing provisions of a local law as part of the Central legislation without repeating those provisions in the Central Act, it cannot make a law adopting the provisions of a local law which did not exist at the time. But in applying this principle the court should look at the substance and not the form of the matter. Section 16 of the Madras General Sales Tax Act, 1959, substantially re-enacted the provisions under the Madras General Sales Tax Act, 1939,

relating to assessment of escaped turnover and the period of limitation for exercising that power, and the subject-matter of section 16 was not something which the Parliament had not applied its mind to when it enacted section 9(3). Therefore section 9(3) is not unconstitutional.—*Haji J. A. Kareem Sait v. Deputy Commercial Tax Officer, Mettupalayam* [1966] 18 S.T.C. 370 (Mad.).

—**Sec. 9(3)—Late submission of return—Imposition of penalty under section 17(3), Madhya Pradesh General Sales Tax Act, 1958—Legality—M. P. Sales Tax (Central) Rules, 1957, Rule 7-A.**—Penalty for late submission of returns in Form V appended to the Madhya Pradesh Sales Tax (Central) Rules, 1957, can be imposed under section 17(3) of the M. P. General Sales Tax Act, 1958.—*Commissioner of Sales Tax, Madhya Pradesh, Indore v. Kantilal Mohanlal and Brothers* [1967] 19 S.T.C. 377 (M.P.).

—**Sec. 9(3)—Penalty—Failure to disclose turnover—Imposition of penalty under section 9(3), Central Sales Tax Act (74 of 1956) read with section 12(3), Madras General Sales Tax Act (1 of 1959)—Legality—Scope of Section 9(3), Central Act.**—Under section 9(3) of the Central Sales Tax Act, 1956, only the local procedure is applied for the assessment, collection and enforcement of penalty, which is payable by a dealer under the Central Act. Unless a penalty can be levied under the provisions of the Central Act, like the tax on the turnover under that Act, there will be no liability to penalty only by reason of the provisions of the Madras Act. In other words, section 12(3) of the Madras General Sales Tax Act, 1959, is not adopted for the purposes of section 9(3) of the Central Sales Tax Act, 1956. The only provision in the Central Act providing for penalty is section 10 and that does not cover a penalty of the type contemplated by section 12(3) of the Madras Act. Therefore the imposition of penalty under section 9(3) of the Central Sales Tax Act, 1956, read with section 12(3) of the Madras General Sales Tax Act, 1959, for failure to disclose the turnover brought to tax under the Central Sales Tax Act, 1956, is not legal. While it is competent for the Parliament to adopt the existing provisions of a local law as part of the Central legislation without repeating those provisions in the Central Act, it cannot make a law adopting the provisions of a local law which does not exist at that time. Therefore unless the 1939 Act contained power to levy a penalty, such a power given to the department for the first time under section 12(3) of the 1959 Act, which repealed the 1939 Act, cannot be regarded

under section 9(3) to be adopted for the purpose of the Central Act. *Haji J. A. Kareem Sait v. Deputy Commercial Tax Officer, Mettupalayam* [1966] (18 S.T.C. 370) followed.—*D. H. Shah & Co. v. The State of Madras* [1967] 20 S.T.C. 146 (Mad.).

—**Sec. 9(3)—Penalty—Power to impose penalty for contravention referred to in section 16(2), Madras General Sales Tax Act, 1959—Applicability of principle of legislation by reference.**—The power to collect penalty under section 9(3) of the Central Sales Tax Act, 1956, will cover only the penalty payable under that Act and will not include a power to impose the penalty itself for a contravention or omission for which that Act does not contain a provision apart from the Madras General Sales Tax Act. Moreover the Legislature cannot with propriety make a law to adopt by reference the provisions of a statute law as it stands amended by the Legislature from time to time, and the Madras General Sales Tax Act, 1939, which was incorporated by reference by section 9(3) of the Central Sales Tax Act, 1956, did not contain a provision for levy of a penalty referred to in section 16(2) of the Madras General Sales Tax Act, 1959. Therefore the provisions of section 9(3) of the Central Sales Tax Act, 1956, cannot be applied for the levy of a penalty on a dealer for a contravention of the kind contemplated in section 16(2) of the Madras General Sales Tax Act, 1959. *Haji J. A. Kareem Sait v. Deputy Commercial Tax Officer* [1966] (18 S.T.C. 370) and *D. H. Shah & Co. v. The State of Madras* [1967] (20 S.T.C. 146) referred to.—*The State of Madras v. M. Angappa Chettiar and Sons* [1968] 22 S.T.C. 226 (Mad.).

—**Sec. 9-A—Collection of tax at higher rate for failure to furnish the necessary forms—Subsequent refund of a portion of the collection—Order of department demanding entire collection—Legality—Whether Rule 4-A(ii), Central Sales Tax (Madras) Rules, 1957, ultra vires Government.**—The decisions in *Tata Iron and Steel Company Ltd. v. State of Madras* [1954] (5 S.T.C. 382) and *Abdul Quader and Co. v. Sales Tax Officer* [1964] (15 S.T.C. 403), which interpreted the Acts in the light of the powers of the Legislature of a State, cannot in terms be made applicable to the Central Sales Tax Act, 1956, which has been enacted in exercise of the exclusive power which Parliament has with respect to matters enumerated in List I of Schedule VII of the Constitution. Rule 4-A(ii) of the Central Sales Tax (Madras) Rules, 1957, was framed by the State Government by virtue of a rule-making power which

has been conferred upon that authority by the Central Sales Tax Act, 1956. The decision of the Supreme Court in *Abdul Quader and Co. v. Sales Tax Officer* [1964] (15 S.T.C. 403), which invalidated the making of such a rule as being in excess of legislative jurisdiction by Entry 54 of List II, cannot apply to a rule made by an authority conferred by a Parliamentary enactment. Where at the time certain transactions of inter-State sales were put through by the petitioners to Government departments, the petitioners were not supplied with the D forms and therefore they collected tax at the higher rate. Subsequently the petitioners refunded to the buyers a portion of the tax collected. When the department made an order under rule 4-A (ii) of the Central Sales Tax (Madras) Rules, 1957, demanding the payment of the whole amount collected by the petitioners, they filed a petition under Article 226 of the Constitution and contended that the demand was illegal: *Held*, (1) that the demand could not be challenged as being in excess of the powers conferred by the Act, and that the collection of sales tax was not unlawful at the time the transactions were put through; (2) that the department could not refuse to recognise the fact of refund and therefore the demand must be restricted only to the difference between the tax collected by the petitioners less the amount refunded by them.—*THE INDIAN STEEL ROLLING MILLS LTD. v. COMMERCIAL TAX OFFICER AND ANOTHER* [1965] 16 S.T.C. 285 (Mad.).

—**Sec. 9-A—Collection of tax on sales not chargeable under the Act—Whether liable to be paid to Government—“Any amount by way of tax”—Meaning of—Scope of section 9A, Central Sales Tax Act, 1956, and rule 4-A, Central Sales Tax (Madras) Rules, 1957.**—The expression “any amount by way of tax” in section 9A of the Central Sales Tax Act, 1956, should be understood in the context of the words “under the Act” that follow, and so read, what is contemplated by the section is collection of an amount in respect of which there is liability to pay as tax under one or the other provision of the Act. The section therefore does not cover an amount for which there is no liability under the Act to pay as tax. Rule 4-A of the Central Sales Tax (Madras) Rules, 1957, itself has no wider scope than section 9A. Therefore the department is not entitled, relying on rule 4-A(iv), to demand from a registered dealer collections of tax on sales which are not chargeable to tax under the Act. Interpretation of the scope and effect of a particular section is one thing and legislative

competence of that provision is another. If the interpretation of the scope of a particular provision is in one way, the question of *vires* may not arise. *Indian Steel Rolling Mills Ltd. v. Commercial Tax Officer* [1965] (16 S.T.C. 285) disapproved. *Tata Iron and Steel Co. Ltd. v. The State of Madras* [1954] (5 S.T.C. 382) followed. *Abdul Quader and Co. v. Sales Tax Officer* [1964] (15 S.T.C. 403) referred to.—*EAST INDIA RUBBER WORKS PRIVATE LTD. v. GOVERNMENT OF MADRAS* [1968] 22 S.T.C. 157 (Mad.).

—**Sec. 10 (b)—Registered dealer—Purchase of goods not covered by certificate of registration—When offence under sec. 10(b) is committed—Mens rea—Whether an ingredient of offence.**—In order to constitute an offence under sec. 10(b) of the Central Sales Tax Act, 1956, it must be proved that the dealer made the representation that the goods purchased were covered by the registration certificate with the knowledge that they were not so covered. Where there was no finding that the representations made by the petitioner were false, namely that the “C” Form declarations were issued without the belief that the goods purchased were covered by the registration certificate, the imposition of penalty under section 10-A would be illegal. *Mens rea* is an essential ingredient for the commission of an offence under section 10(b). There is a clear distinction between a representation which is negligent and one which is fraudulent. The section requires that the representation must have been made falsely, *viz.*, without any belief in its truth. A representation, however negligent, is not fraudulent.—*P. K. VARGHESE AND SONS v. SALES TAX OFFICER, SPECIAL CIRCLE, ERNAKULAM* [1965] 16 S.T.C. 323 (Ker.).

—**Sec. 10(b)—Registered dealer—Purchase of goods not covered by certificate of registration—Whether offence under sec. 10(b) has been committed—Mens rea—Whether an ingredient of offence.**—In an application under sec. 23 of the Mysore Sales Tax Act, 1957, the only grounds that the High Court can consider are: (1) Whether the Appellate Tribunal has failed to decide a question of law or (2) whether it has decided a question of law erroneously. So far as questions of fact are concerned, the findings reached by the Tribunal are final and conclusive. For an offence under sec. 10(b) of the Central Sales Tax Act, 1956, *mens rea* is necessary. The petitioner obtained a registration certificate under the Central Sales Tax Act, 1956, for his inter-State purchases of tin provisions, patent goods, medicine, tobacco, medicated wines, denatured spirit, cigars and cigarettes. In respect of these goods the Sales Tax Authorities had issued to the petitioner the necessary “C”

Forms. The petitioner used some of these "C" Forms for purchasing in the course of inter-State trade goods not covered by his certificate of registration, *viz.*, petrolmaxes, tapes, toilets, battery cells, glassware, essences etc. The officer held that the petitioner had committed an offence under section 10(b) and therefore imposed on him a penalty of 10½ per cent. of the disputed turnover under section 10-A. The Sales Tax Appellate Tribunal came to the conclusion that the representations made by the petitioner in the "C" Forms given by him to his sellers outside the State were false representations: *Held*, (1) on the facts that the petitioner had made false representations to his sellers deliberately and therefore the levy of penalty was proper; (2) that as the goods purchased by the petitioner were not covered by any valid "C" Forms, sales tax was leviable at 7 per cent., and therefore the penalty that was leviable was 10½ per cent. of the turnover. The petitioner, in another case, manufactured soap and he had included the following goods in his application for certificate of registration under section 8: coconut oil, perfumes, silicate, caustic soda, nails, colours, strappings, papers and rosin. During the relevant year the petitioner purchased maroti oil and groundnut oil by using some of the "C" Forms. The question was whether he was guilty of the offence under section 10(b): *Held*, that, in the circumstances of the case, it could not be said that the petitioner had a guilty mind in making the purchases and the imposition of the penalty was therefore not proper.—*M. PAIS & SONS AND ANOTHER V. THE STATE OF MYSORE* [1966] 17 S.T.C. 161 (Mys.).

—**Sec. 10(b)—Offences—Registered dealer—C Forms—Purchase of goods not covered by certificate of registration—When offence under section 10(b), Central Sales Tax Act, 1956, is committed—Mens rea—Whether necessary.**—The phrase "falsely represents" in section 10(b) of the Central Sales Tax Act, 1956, clearly indicates that the falsity of the representation should be with the knowledge of the representator. If he is under an honest belief that what he represents is true, he cannot be said to make a false representation. The gravamen of the offence is the representation of something as true which, in fact and to the knowledge of the representator, is false. It cannot be said that the offence is an absolute one in the sense that it is not conditional on the presence of *mens rea*. Section 10(b) is a penal provision and where a question arises whether an offence has been committed or not, the dealer who is accused of the offence is entitled to the benefit of the doubt. In the application for registration made by the assessee, a dealer registered under the Central Sales Tax Act, 1956, the

assessee wanted a certificate in respect of the goods for the use in the manufacture tea-chests for packing purposes, machinery, drugs etc. for running the estate and manufacturing tea. In the certificate of registration issued on this application against the column "for use in manufacture", "tea-chests, machinery, drugs etc." were mentioned. The C Form issued by the assessee included blankets, paints, tiles, clocks and brushes. The question was whether the assessee had made false representation in the declarations in Form C issued by him and was therefore liable to penalty under section 10(b) of the Act. The assessee contended that he was under the *bona fide* belief that the word "etc." in the certificate of registration would cover those articles: *Held*, that the assessee could possibly have formed the belief, and quite honestly, that the word "etc." would cover those articles and therefore it could not be said that the assessee, with the full knowledge of the falsity of the representation, made the declaration in the C Form issued by him and he was not liable to the penalty under sec. 10(b). *Varghese v. Sales Tax Officer* [1965] (16 S.T.C. 323) relied on.—*THE BEN GORM NILGIRI PLANTATIONS COMPANY, COONOR V. THE GOVERNMENT OF MADRAS* [1968] 21 S.T.C. 480 (Mad.).

—**Sec. 10(b), (d)—Gist of the offences under section 10(b), and 10(d), Central Sales Tax Act, 1956—Proceedings for offence under section 10(b) taken earlier—Whether bar subsequent proceedings for offence under section 10(d)**—The gist of the offence under section 10(b) of the Central Sales Tax Act, 1956, is a false representation made to the outside dealer at the time of the purchase, that the goods intended to be purchased are of the class covered by the certificate of registration, whereas the gist of the offence under section 10(d) is that after purchasing goods for any of the purposes specified in section 8(3)(b), the purchaser failed to make use of the goods for any such purpose. Thus the facts, which if true, were said to constitute the former offence are not the facts which are said to constitute the latter offence. That certain facts relevant to the latter offence were also alleged in the charge for the former offence, is immaterial and does not attract either section 403 of the Criminal Procedure Code, 1898, or Article 20(2) of the Constitution. Therefore the institution of proceedings against the petitioner under section 10-A for an offence under sec. 10(d) is not barred by an earlier proceeding instituted against him for an offence under section 10(b).—*CITY THEATRES (P.) LIMITED V. THE SALES TAX OFFICER* [1967] 20 S.T.C. 6 (Ker.).

—**Sec. 10(d)—Registered dealer—Penalty—Issue of old C Forms after amendment of section 8(3)b—Goods purchased used in execution of contracts—Levy**

of penalty for contravening section 10(d)—Legality.—The assessee purchased electrical goods during the period 1st October, 1958, to 31st March, 1961, and used the goods in execution of certain works contracts. On the ground that in doing so, the assessee had contravened section 10(d) of the Central Sales Tax Act, 1956, a penalty was levied on him. The assessee contended that as the C Forms issued to him were those in vogue prior to the amendment of section 8(3)(b) in October, 1958, he was under the impression that the goods purchased could be used in execution of the contracts and therefore penalty under section 10(d) could not be levied on him: *Held*, that if it were a case of assessment, the assessee would be governed by the amended section 8(3)(b) and he could not in that case take cover under the C Forms which were current prior to 1st October, 1958, but the case of penalty stood on a different footing. It was only where the use for another purpose was without reasonable excuse that penalty would be justified. Where reasonable excuse was shown, no penalty could be levied. *Viswanathan and Co. v. State of Madras* [1965] (16 S.T.C. 125) relied on. *Modi Spinning and Weaving Mills Co., Ltd. v. Commissioner of Sales Tax, Punjab and Another* [1965] (16 S.T.C. 310) referred to.—*BAPU AND COMPANY, MADRAS-1 v. THE STATE OF MADRAS* [1968] 22 S.T.C. 17 (Mad.).

—*Secs. 10(d), 10-A—Certificate of registration—Amendment effected in Act not carried out in certificate—User of goods purchased for execution of contracts—Whether there is failure to use goods for declared purpose—Imposition of penalty—Legality—Whether order appealable—Madras General Sales Tax Act (1 of 1959), Secs. 23, 31, 45(2)(e).*—The assessee had undertaken the execution of electrical contracts for the Neyveli Lignite Corporation. The registration certificate issued to the assessee under the Central Sales Tax Act, 1956, mentioned the conditions extracted from sec. 8(3)(b) of the Act before its amendment on 1st October, 1958. After the amendment of the Act the assessee was not issued a certificate embodying the amendment to sec. 8(3)(b). During the assessment years 1958-59 and 1959-60 the department took the view that the assessee could use the goods purchased only for the purposes mentioned in section 8(3)(b) after the amendment (only for resale or for manufacture or processing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power) and could not use the goods for the fulfilment of his contract with the Corporation and that his action in using the goods purchased for that purpose involved a contravention of section 10(d) for which he was liable to a penalty under section 10-A: *Held*, that this was not a proper case for the levy of a penalty under section 10-A,

inasmuch as only if a certificate had been issued to the assessee in a form which embodied the amendment to section 8(3)(b) could it be considered that, without reasonable excuse, he had failed to make use of the goods for any of the purposes recorded in his certificate. *Held, further*, that the order levying the penalty was appealable. The analogous provisions to section 10(d) and section 10-A of the Central Sales Tax Act, 1956, in the Madras General Sales Tax Act, 1959, are section 23 and section 45(2)(e). In this view of the matter the levy of penalty, for the purpose of appeal, should be viewed as one under sec. 23 of the Madras General Sales Tax Act, 1959, and section 31 of that Act gives a right of appeal to a person aggrieved by an order under section 23.—*VISWANATHAN AND COMPANY v. THE STATE OF MADRAS* [1965] 16 S.T.C. 125 (Mad.).

—*Secs. 14, 15—Declared goods—Purchases of tax-free goods by giving declaration—Cotton—Purchase of raw cotton inside State for ginning and ginned cotton sent to another State for manufacture of cloth—Act and Rules amended imposing condition that goods purchased must be for use by dealer “in the manufacture in the State of Punjab for sale”—Failure to issue new certificate of registration carrying out amendment—Right to claim exemption—Restrictions in section 15, Central Act—State Act imposing higher rate of tax on declared goods—Whether inoperative—Punjab General Sales Tax Act (46 of 1948), Secs. 5(2)(a)(ii), 6, 7.—Punjab General Sales Tax Rules, 1949.*—The meaning or the intention of clause (3) of Article 286 of the Constitution of India is not to destroy all charging sections in the Sales Tax Acts of the States which are discrepant with section 15(a) of the Central Sales Tax Act, 1956, but to modify them in accordance therewith. The law of the State is declared to be subject to the restrictions and conditions contained in the law made by Parliament and the rate in the State Act would *pro tanto* stand modified. The assessee-company purchased raw cotton in Punjab, ginned the cotton in its ginning mills in Punjab and sent the bales to its spinning and weaving mills situated in the State of Uttar Pradesh for purposes of manufacture of cloth. In computing its taxable turnover, the assessee claimed to deduct a certain sum on account of raw cotton purchased by it on a certificate of registration granted to it in which there was no condition that the goods were for use by the assessee “in the manufacture in the State of Punjab of goods for sale”. Section 5(2)(a)(ii) of the Punjab General Sales Tax, 1948, and rule 26 of the Punjab General Sales Tax Rules, 1949, had, however, been amended to provide for that condition: *Held*, (1) that the registration certificate was only evidence that the assessee was a registered dealer for purposes of certain commodities to be used in manufacture, one of them

being cotton. The old registration certificate even though it did not contain the words "in the State of Punjab" would stand impliedly modified by the sections, the rule and the form operating together. The assessee had to comply with the Act and the Rules and could not shelter behind the unamended certificate; (2) that according to section 5(2)(a)(ii) the goods which were the result of manufacture must be for sale and not for use by the manufacturer in some manufacture outside the the State resulting in different goods. The assessee therefore could not claim the exemption because all the requirements of the section were not complied with; (3) that although sections 4 and 5 of the Punjab General Sales Tax Act, 1948, provided for tax on cotton at 4 per cent., they did not become inoperative on account of their conflict with the provisions of sections 14 and 15 of the Central Sales Tax Act, 1956. By virtue of the provisions of the Central Act, tax on cotton could only be levied at 2 per cent. The second proviso to section 5(1) of the Punjab Act was enacted out of abundant caution and even without it the result was the same.—*MODI SPINNING AND WEAVING MILLS CO. LTD. v. COMMISSIONER OF SALES TAX, PUNJAB, AND ANOTHER* [1965] 16 S.T.C. 310 (S.C.).

—**Sec. 15**—*Provision delegating power to State Government to fix rates without guidance—Whether void—Subsequent retrospective amendment fixing maximum at 2 pice per rupee—Validity—Purchase tax—Tax on the purchase of goods for use in manufacture—Whether excise duty—"Purchase" definition—"Acquisition of goods", "valuable consideration", meanings of—Purchase of goods for manufacture and sale of manufactured product—Tax at point of purchase and sale—Whether same goods are taxed—Punjab General Sales Tax Act (46 of 1948), Secs. 2(ff), 4, 5—*Since under section 5 of the Punjab General Sales Tax Act, 1948 as it originally stood, an uncontrolled power was conferred on the Provincial Government to levy tax at such rates as the Government might direct, the Legislature practically effaced itself in the matter of fixation of rates and it did not give any guidance either under that section or under any other provisions of the Act. Section 5 as it was originally enacted was therefore void. But for that reason the entire Act was not still-born. The charging section was not section 5 but section 4 and the striking out of section 5 did not make section 4 void, though till a proper section was inserted, it remained unenforceable. The amendment made by section 2 of the East Punjab General Sales Tax (Second Amendment) Act, 1952, had the effect of inserting in the Act section 5 as amended with retrospective effect. Under that section the discretion given to the Government to fix a rate not exceeding 2 pice in a rupee was so insignificant that it was

not possible to hold that the discretion exceeded the permissible limits and therefore section 5 as amended was valid. Section 2(ff) of the Punjab General Sales Tax Act as amended in 1959 read as follows: "'Purchase', with all its grammatical or cognate expressions, means the acquisition of goods specified in Schedule 'C' for use in the manufacture of goods for sale for cash or deferred payment or other valuable consideration otherwise than under a mortgage, hypothecation, charge or pledge": *Held*, (i) that the expression "acquisition" in section 2(ff) only meant transfer; (ii) that the expression "valuable consideration" took colour from the preceding expression "cash or deferred payment" and only meant some other monetary payment in the nature of cash or deferred payment; (iii) that, therefore, section 2(ff) was not void for legislative incompetence; (iv) that although by reason of the definition of purchase in section 2(ff) the goods mentioned therein would be taxed if purchased by a manufacturer but would not be taxed if purchased by a person other than a manufacturer, there was a reasonable classification in the definition and it did not therefore offend Article 14 of the Constitution. The purchase tax levied under the Punjab General Sales Tax Act, 1948, was not an excise duty since the purpose for which the goods were purchased was only relevant for fixing the taxable event, but the tax was on the purchase of goods. That taxable event was fixed before the goods were actually manufactured. Where the goods purchased and the goods sold are not identical ones it cannot be said that the same goods are taxed at two stages. Therefore where there is a purchase tax on oil-seeds or steel scrap and steel ingots or cotton, and sales tax on oil and oil-cake or rolled steel sections or yarn after manufacture, it cannot be said that the same goods are taxed at two stages, since the manufacture has changed the identity of the goods purchased and the goods sold. When oil is produced out of oil-seeds, the process certainly transforms raw material into different article for use and oil-seeds can therefore be said to be used in the manufacture of goods. The process whereby scrap iron loses identity and becomes rolled steel sections, a new marketable commodity, is one of manufacture.—*DEVI DASS GOPAL KRISHNAN AND OTHERS v. THE STATE OF PUNJAB AND OTHERS* [1967] 20 S.T.C. 430 (S.C.).

—**Sec. 15(a)**—*Declared goods—Possibility of tax being imposed on purchase at more than one stage—Provision in State Act, whether contravenes section 15(a), Central Sales Tax Act—Act imposing purchase tax irrespective of use—Old notification fixing rate of tax on purchase for the purpose of use in the manufacture of goods—Whether applicable—Punjab General Sales Tax Act (46 of 1948),*

Secs. 2(ff), 5(1), (2)(a)(vi), 12.—Per SUBBA RAO, C.J., SHAH and VAIDIALINGAM, JJ. (SIKRI and RAMASWAMI, JJ., dissenting)—The provisions of the Punjab General Sales Tax Act, 1948 (as they stood on April 1, 1960), levying purchase tax on declared goods specified in Schedule C contravene the provisions of section 15(a) of the Central Sales Tax Act, 1956, as the stage at which purchase tax is levied is neither definite nor ascertainable, and there is a possibility of the tax being levied at more than one stage. The mere injunction in the second proviso to section 5(1) that the rate should not be higher than the one fixed in the Central Act and that the levy must be at one stage will be of no avail unless the Act or the Rules framed thereunder make it very clear that there will be no levy or collection of tax except from the persons who are bound to pay in accordance with the Central Act. If the Central Act makes it mandatory that the tax can be collected at only one stage it is not enough for the State to say that a person, who is not liable to pay tax, must nevertheless pay it in the first instance and then claim a refund at a later stage. If a person is not liable for payment of tax at all at any time the collection of a tax from him with a possible contingency of refund at a later stage will not make the original levy valid; because if the sales or purchases are exempt from taxation altogether they can never be taken into account at any stage for the purpose of calculating or arriving at the taxable turnover and for levying tax. "Purchase" was defined in section 2(ff) in the Punjab General Sales Tax Act, 1948, as amended in 1958, as meaning "acquisition of goods other than sugarcane, foodgrains, and pulses for use in the manufacture of goods for sale for cash or deferred payment or other valuable consideration,....." On April 19, 1958, the State Government issued a notification fixing 2 naye paise in the rupee as the rate of tax on the purchase of goods by a dealer for use in the manufacture of goods for sale. In 1960, the definition was amended whereby "purchase" was defined as "the acquisition of goods specified in Schedule C for cash or deferred payment or other valuable consideration....." The notification however was not amended until September 21, 1961, to conform to the definition as amended in 1960: *Held, by the Full Court*, (1) that the notification as issued in 1958 could not be treated as validly made after the 1960 amendment, as it was not open to the State, in the matter of levying purchase tax, to choose to levy tax only on the category of purchases for use in the manufacture of goods for sale; (2) that section 22 of the Punjab General Sales Tax Act, which was sought to sustain the levy of tax under the original

notification of 1958, had no application to the cases; (3) that therefore purchase tax could not be levied for the years 1960-61 and 1961-62 on the basis of the notification issued in 1958. Section 15 of the Central Sales Tax Act, 1956, is not restricted in its application only to registered dealers.—*BHAWANI COTTON MILLS LTD. v. THE STATE OF PUNJAB AND ANOTHER* [1967] 20 S.T.C. 290 (S.C.).

—*Secs. 14, 15—Ginned and unginned cotton—Person buying raw cotton and selling, after ginning, ginned cotton and cotton seed—Imposition of tax on purchase and sale transactions inside State—Legality—Provisions of East Punjab Act imposing such tax—Whether contravene sections 14 and 15, Central Sales Tax Act, 1956—Validity—Ginning process—Whether can be deemed manufacture—Imposition of similar tax on (1) persons purchasing oil-seeds, converting them into oil and selling oil, and (2) on persons purchasing iron scrap and selling finished goods—Legality—East Punjab General Sales Tax Act (46 of 1948), Section 2(ff), (i)—East Punjab General Sales Tax (Amendment) Act (7 of 1958)—Constitution of India, Article 286(3).*—The petitioners, who purchased raw cotton and sold ginned cotton and cotton seed after ginning the raw cotton, were sought to be taxed under the East Punjab General Sales Tax Act, 1948, as amended by the East Punjab General Sales Tax (Amendment) Act, 1958, and the subsequent Amendment Acts Nos. 13 and 24 of 1959, on their purchases of raw cotton and also on their sales of ginned cotton effected inside the Punjab State. The petitioners contended that Punjab Act No. 7 of 1958 was *ultra vires* the Constitution inasmuch as it offended the provisions of the Central Sales Tax Act, 1956, and that they were not liable to pay any tax when they sold their goods outside the State and were liable to pay tax at 2 per cent. only when they sold their goods inside the State: *Held*, (1) that ginned and unginned cotton are essentially the same commodity and buying unginned cotton and selling ginned cotton are two transactions dealing with the same commodity and that as this commodity has been declared under sec. 14 of the Central Sales Tax Act, 1956, as one of the goods of special importance in inter-State trade or commerce, the person dealing in it is entitled to the benefits of section 15 of that Act and inasmuch as under the East Punjab General Sales Tax Act, 1948, as amended by Punjab Act No. 7 of 1958, the person has to pay additional tax, the law imposing that tax is invalid; (2) that therefore the petitioners were only liable to pay tax not exceeding two per cent. on sales effected inside the State and that they were not liable to pay any tax at

all when they effected their sales outside the State. Oil-seeds and oil are not the same commodity and a person who buys oil-seeds and extracts and sells the oil is not exempt from liability to pay tax under the East Punjab General Sales Tax Act, 1948. Similarly dealers in non-ferrous metals who buy semi-finished goods cannot be exempted from liability to pay the tax as they turn the materials into finished articles after subjecting them to a process of manufacture. So also are the persons buying iron scrap, converting it into some different articles and then selling those articles. **TEK CHAND, J.**—The declared goods enumerated in section 14 of the Central Sales Tax Act, 1956, are individually specified under separate items and each item deals with a single species of such goods which cannot further be split up for purposes of tax liability. Cotton, ginned or unginned, being a single species of declared goods, cannot be subjected under section 15(a) to a tax exceeding two per cent. of the sale or purchase price thereof or at more than one stage. The ginning process despite the employment of machinery for separating the seeds from raw cotton cannot be deemed "manufacture" within the provisions of section 2 (ff) of the East Punjab General Sales Tax Act, 1948.—**RAGHBIR CHAND SOM CHAND v. EXCISE AND TAXATION OFFICER, BHATINDA AND OTHERS** [1960] 11 S.T.C. 149 (Punj.)

—**Secs. 14, 15—Iron and steel—Purchase of iron and steel for purpose of rolling them into rolled steel sections—Levy of purchase tax—Legality—Levy of (1) sales tax on sale of steel to ordinary consumer, (2) purchase tax on sale of steel to manufacturer, and (3) sales tax on sale of rolled steel sections—Whether contrary to provisions of section 15, Central Sales Tax Act—East Punjab General Sales Tax Act (46 of 1948), Sec 2(ff).**—The purchase of iron or steel for the purpose of rolling it into rolled steel sections is acquisition of goods for use in the manufacture of goods for sale within the meaning of section 2(ff) of the East Punjab General Sales Tax Act, 1948, and such purchase is therefore liable to purchase tax. Where the same commodity in certain circumstances and in the case of certain transactions with a particular class of persons may attract either sales tax or purchase tax, but not both, it is not correct to say that tax has been charged on more than one stage on the same commodity contrary to section 15(a) of the Central Sales Tax Act, 1956. When steel is rolled into rolled steel sections the outcome is a different and a new commodity and when it is sold, there is a sale of a different commodity and not a sale of steel over again. Therefore when

sales tax is levied on the sale of rolled steel sections it is not levied a second time or at the second stage on the same commodity in the same condition. When sales tax is levied in the case of a sale to an ordinary consumer of steel then no purchase tax is attracted and when steel is sold to a manufacturer no sales tax is attracted but what is leviable is purchase tax. The three above instances do not go together and make out two stages or three stages of sales tax or purchase tax or both taxes on the same commodity in the same condition.—**DEVGUN IRON AND STEEL ROLLING MILLS, GOBINDGARH v. THE STATE OF PUNJAB AND OTHERS** [1961] 12 S.T.C. 590 (Punj.). The appeal preferred against this decision is reported as **DEVI DASS GOPAL KRISHNAN AND OTHERS v. THE STATE OF PUNJAB AND OTHERS** [1967] 20 S.T.C. 430 (S.C.). See page 237 *supra*.

—**Sec. 14—Cotton and cotton seeds—Whether two different goods—Dealer in cotton—Taxation of cotton at purchase point and of cotton seeds at sale point—Legality—Andhra Pradesh General Sales Tax Act (6 of 1957), Secs. 5, 6; Sch. II, item 23; Sch. IV, item 5.**—The assessee, a dealer in cotton, was assessed to tax as purchaser of cotton under item 5 of Schedule IV of the Andhra Pradesh General Sales Tax Act, 1957. When he sold the cotton seeds, after separating the seeds from the cotton, he was assessed to tax on the sale point of cotton seeds under item 23 of Schedule II. On the question whether there was double taxation contrary to the provisions of the Act: *Held*, that it is only by a manufacturing process that the cotton and seed are separated and it is not correct to say that the seed so separated is cotton itself, or part of the cotton. They are two distinct goods, though before the manufacturing process the seed might have been a part of the cotton itself. Therefore there was no taxation of the same goods both at the purchase point and the sale point; *Held further*, that if in exercise of the general policy of taxation the Legislature describes cotton and cotton seeds as two different commodities or goods for the purpose of the Sales Tax Act, it is not open to canvass the reasonableness or the justification of such a classification relying upon the hardship that would result therefrom.—**KOTAK AND COMPANY v. THE STATE OF ANDHRA PRADESH** [1962] 13 S.T.C. 709 (A.P.).

—**Secs. 14, 15—Groundnuts—Single point tax—Liability to tax of last purchaser of groundnuts selling them after assessment year—Scope of section 5(4), Mysore Act.**—Under section 5(4) of the Mysore Sales Tax Act, 1957, if a dealer in groundnuts is the last purchaser in the assessment year, he is clearly liable to pay the tax in respect of that purchase turnover even if he, in

his turn, sells those goods to another dealer after the expiry of the assessment year. The liability to pay the tax referred to in that section, which arises by reason of the purchase being the last purchase in the assessment year, does not disappear if the goods are not again sold during that year but are sold only subsequently. [It was found in this case that that part of section 15 of the Central Sales Tax Act, 1956, which forbade the levy of sales tax in respect of transactions relating to declared goods at more than one stage had not to any extent been transgressed. But their Lordships did not express any opinion on the question whether an assessee would be entitled to refund if tax was realised from the dealer to whom the assessee subsequently sold the groundnuts.] *Kishinchand Chellaram v. Commissioner of Income-tax* [1956] (29 I.T.R. 993) and *Abdulsalam Rowther v. State of Kerala* [1961] (12 S.T.C. 98) relied on.—*HORMUSJI HIRJIBHOY & Co. v. COMMERCIAL TAX OFFICER, CIRCLE II, HUBLI* [1962] 13 S.T.C. 773 (Mys.).

—**Secs. 14, 15—Oil-seeds—Coconuts—Refund of tax levied on declared goods when they are subsequently sold in the course of inter-State trade—Whether Rule 27-A, Andhra Pradesh Rules, operates retrospectively—Imposition of higher rate of tax on coconuts—Whether infringes Art. 14, Constitution—Andhra Pradesh General Sales Tax Rules, 1957, Rule 27-A.**—Rule 27-A of the Andhra Pradesh General Sales Tax Rules, 1957, which came into force on 1st October, 1958, did not operate with retrospective effect from the date the Andhra Pradesh General Sales Tax Act came into force. Rule 27-A is confined to transactions happening after that rule and section 15 of the Central Sales Tax Act, 1956, came into force. A State is not precluded from choosing different rates of taxation for different objects and it would not be violating the guarantees enshrined in Article 14 of the Constitution of India if it imposed different rates on different commodities. Therefore the imposition of a higher rate of tax of 3 naye paise in the rupee on coconuts did not constitute an infraction of Article 14 of the Constitution. The tax of 3 naye paise could however be imposed only till 1st October, 1958. Thereafter all declared goods were liable to be taxed at 2 naye paise by reason of the prohibition contained in section 15 of the Central Sales Tax Act, 1956. All that is necessary in order to save a classification from the vice of discrimination is that there should be a reasonable relation between the basis of the classification and the object of the Act. Coconuts are comprehended within the expression “oil-seeds” in section 14 of the Central Sales Act, 1956.—*SRI KRISHNA COCONUT Co. v.*

THE STATE OF ANDHRA PRADESH [1962] 13 S.T.C. 193 (A.P.).

—**Secs. 14, 15—Restrictions under section 15, Central Act—Hand-made biris—Whether declared goods—Notification fixing rate at one anna per rupee—Validity—Whether tax can be levied at two per cent. Additional Duties of Excise (Goods of Special Importance) Act, 1957, Sec. 7.**—The word “tobacco” in section 7 of the Additional Duties of Excise (Goods of Special Importance) Act of 1957 includes hand-made *biris* and as such the restrictions imposed on the levy of sales tax under a sales tax law of a State by section 15 of the Central Sales Tax Act, 1956, will apply in the case of the sale of such *biris*. The restriction in section 15 is only that the sales tax under the sales tax law of a State shall not be levied at a rate in excess of two per cent. Therefore a rate of one anna per rupee or 6·25 per cent. on the sale of hand-made *biris* fixed by a State Government under a notification will be bad only to the extent of the excess over 2 per cent. The levy of an amount up to 2 per cent. will not be invalid.—*KATYAR AND Co. v. SALES TAX OFFICER, FATEHGARH, AND ANOTHER* [1963] 14 S.T.C. 133 (All.).

—**Sec. 15—Restrictions and conditions specified in the section—Whether apply when Additional Duties of Excise (Goods of Special Importance) Act (58 of 1957) was passed or only when section 15 was brought into force.**—When Parliament passed the Additional Duties of Excise (Goods of Special Importance) Act (58 of 1957) and brought it into force on the 24th December, 1957, it was fully aware of the fact that the Central Sales Tax Act, 1956, was on the statute book, that most of its provisions including section 14 had by then come into force, and that section 15 had not yet been brought into force. If with that knowledge the Parliament expressly stated in section 7 of Act 58 of 1957 that the restrictions imposed by section 15 of the Central Sales Tax Act shall apply from 1st April, 1958, the ordinary rule of construction would be that those restrictions would apply irrespective of whether section 15 of the Central Sales Tax Act was actually brought into force on 1st April, 1958, or not. Therefore in respect of the quarter ending 30th June, 1958, cotton fabrics could be subject to the rate of tax of two per cent. only.—*STATE OF ORISSA v. BHIMA PATRA* [1963] 14 S.T.C. 512 (Ori.).

—**Secs. 14, 15—Sale in the course of inter-State trade—Refund of tax paid under State law—Necessity to comply with conditions precedent—Madras General Sales Tax Act (9 of 1939), Sec. 5-A (5).**—An

assessee, before he can succeed in his claim to refund of tax under section 5-A(5) of the Madras General Sales Tax Act, 1939, has to establish that the goods have in fact been sold in the course of inter-State trade or commerce and furnish the statement within the stipulated time in order to enable the authorities to verify the factum of such sale. The expression "where a tax has been levied" used in the section must be understood, in the context of the provision, as "where a tax has become leviable". If therefore a transaction inside the State has attracted the levy of tax and a subsequent inter-State transaction has entitled the assessee to the refund of the State sales tax, he has to furnish the necessary statement as prescribed, and unless the conditions prescribed are complied with, the claim to refund has to fail. It is not open to the assessee to claim that he can wait till an assessment is actually made under the State sales tax law to press the claim for refund.—A. K. D. ALAGA RAJA AND M. D. CHANDRASEKARA RAJA v. THE STATE OF MADRAS [1963] 14 S.T.C. 794 (Mad.).

—Secs. 14, 15—*Rivettted baling hoops—Whether retain same form in which rolled steel sections are directly produced by the rolling mills—Bombay Sales Tax Act (3 of 1953), Sch. AA, Entry 4.*—Where pieces of rolled steel sections are joined together by rivetting, they still retain the same form in which rolled steel sections are directly produced by the rolling mills within the meaning of entry 4 in Schedule AA of the Bombay Sales Tax Act, 1953. Therefore rivettted baling hoops, which are nothing but pieces of rolled steel sections joined together by rivetting, fall within that entry.—VAISWANER TRADING CO. v. THE STATE OF GUJARAT [1964] 15 S.T.C. 586 (Guj.).

—Secs. 14, 15—*Coconut and copra—Whether "oil-seeds"—Imposition of sales tax of two per cent. under Sales Tax Act—Further imposition under Madras Commercial Crops Markets Act, 1933—Legality—Mysore Sales Tax Act (25 of 1957), Sec. 5(4)—Madras Commercial Crops Markets Act, 1933.*—The expression "oil-seeds" occurring in section 14(vi) of the Central Sales Tax Act, 1956, includes coconut and copra and therefore the maximum sales tax which can be demanded on the sale or purchase of coconut or copra is two per cent. of the sale or purchase price thereof. As that maximum tax was imposed by section 5(4) of the Mysore Sales Tax Act, 1957, read with Schedule IV to it, the demand of further sales tax on the sale or purchase of copra and coconut under section 11 of the Madras Commercial Crops Markets Act, 1933, was illegal.—KASTURI SESHAGIRI PAI AND CO. v. THE DEPUTY

COMMISSIONER OF SOUTH KANARA [1961] 12 S.T.C. 629 (Mys.).

—Secs. 14, 15—*Coconut—Whether oil-seed—Imposition of sales tax of two per cent. under Sales Tax Act—Further imposition under section 11, Madras Commercial Crops Markets Act, 1933—Legality—Section 11 delegating to State Government power to fix rate of tax without specifying limit—Whether unconstitutional.*—(1) Coconut is an oil-seed coming under item (vi) of section 14 of the Central Sales Tax Act, 1956. (2) The levy under section 11 of the Madras Commercial Crops Markets Act, 1933, is a levy by way of sales tax. (3) As the permitted maximum of two per cent. tax on the sale or purchase price of coconut is being collected under the general sales tax law of the State it is not possible to levy anything further by way of sales tax under section 11 of the Madras Commercial Crops Markets Act, 1933. Some indication of a limit, or some principle with reference to which the executive should determine the rates, must be evident in a section of a law delegating the power of taxation, before the delegation should be held to be constitutional. As section 11 of the Madras Commercial Crops Markets Act, 1933, does not prescribe any such thing, it is unconstitutional. *Kasturi Seshagiri Pai and Co. v. Deputy Commissioner of South Kanara* [1961] (12 S.T.C. 629); *Shanmugha Oil Mills v. Coimbatore Market Committee* [1960] (A.I.R. 1960 Mad. 160); *State of Madras v. Shanmugha Oil Mills* [1962] (75 L.W. 566) and *The Corporation of Calcutta and Others v. Sarat Chandra Ghatak and Another* [1959] (A.I.R. 1959 Cal. 704) relied on. *Pandit Banarsi Das Bhanot and Others v. State of Madhya Pradesh and Others* [1958] (9 S.T.C. 338; A.I.R. 1958 S.C. 909) distinguished. *Kutti Keya v. State Madras* [1954] (A.I.R. 1954 Mad. 621) and *Hamdard Dawakhana v. Union of India* [1960] (A.I.R. 1960 S.C. 554) referred to.—M. T. KUMARAN & CO. v. SECRETARY, MALABAR MARKET COMMITTEE [1964] 15 S.T.C. 634 (Ker.).

—Secs. 14, 15—*Copra—Whether an oil-seed—Nature of liability to tax—General Sales Tax Act (11 of 1125), Sec. 3.*—Copra is an oil-seed within the meaning of that expression as defined in section 14, item (vi), of the Central Sales Tax Act, 1956, and as a result, section 15 of that Act comes into operation. Therefore the liability to tax under the Central Act arises only when the sales are the only sales or they constitute the first sales in a series of sales. In other words, assessments have to be made in the light of section 3 of the General Sales Tax Act, 1125, read with section 15 of the Central Sales Tax Act, 1956. *Kasturi Seshagiri Pai and Co. v. Deputy*

Commissioner of South Kanara [1961] (12 S.T.C. 629) relied on.—*SALES TAX OFFICER, KOZHICODE v. K. V. MOOSA KOYA AND ANOTHER* [1966] 18 S.T.C. 464 (Ker.).

—**Sec. 14(vi)—Declared goods—Gingelly seed and mustard seed—Whether oil-seeds.**—If a commodity satisfies the definition which the Legislature has given to the word “oil-seeds”, it is an oil-seed within the meaning of the said provision. Gingelly seeds and mustard seeds are oil-seeds within the meaning of section 14(vi) of the Central Sales Tax Act, 1956, and therefore an assessee is entitled to exemption in respect of the sale of gingelly seeds and mustard seeds if he is not the first seller of these goods in the State, and is liable to be taxed only at two per cent. if he is the first seller of these goods. *State of Andhra Pradesh v. Kajjam Ramachandraiah Gari Anantaiah* [1961] (12 S.T.C. 795) dissented from. *Kasturi Seshagiri Pai & Co. v. The Deputy Commissioner of South Kanara* [1961] (12 S.T.C. 629) and *Sales Tax Officer, Kozhikode v. K. V. Moosa Koya and Another* [1966] (18 S.T.C. 464) relied on.—*C. M. HAMSА HAJI v. SALES TAX OFFICER, TIRUR* [1967] 20 S.T.C. 470 (Ker.).

—**Sec. 15—Declared goods—Khandsari sugar—Levy of sales tax—Restrictions and conditions—“Successive” in section 3-A, U.P. Act—Meaning of—Whether includes manufacturer-dealer—Legality of levy of sales tax on khandsari sugar for period 1st April, 1958, to 28th February, 1959—U.P. Sales Tax Act (15 of 1948), Secs. 3, 3-A—Additional Duties of Excise (Goods of Special Importance) Act, 1957, Sec. 7—Constitution of India, Article 286(3).**—In exercise of the power conferred under section 3-A of the U.P. Sales Tax Act, 1948, the State Government issued Notification No. 418/X-902 (9)-52 dated 31st January, 1957, declaring that with effect from 1st February, 1957, the turnover in respect of *khandsari* sugar manufactured in Uttar Pradesh was liable to be taxed only at the point of sale by the manufacturer and at the rate of 3 pies per rupee. This notification was amended by the State Government by issuing Notification No. 4485/X dated 14th December, 1957, which directed that no sales tax was to be payable with effect from 14th December, 1957, by dealers in respect of sugar including *khandsari* sugar provided that the additional Central excise duties leviable on it from the closing of business from 13th December, 1957, had been paid and the dealers thereof had furnished proof to the satisfaction of the assessing authority about the payment. The assessee was a manufacturer-dealer of *khandsari* sugar. In regard to the assessment of sales tax for the assessment year 1958-59 on the assessee the following two questions were referred to the

High Court under section 11(1) of the U.P. Sales Tax Act, 1948: “(1) Whether the word ‘successive’ used in section 3-A of the U.P. Sales Tax Act includes the first dealer? (2) Whether in view of sections 14 and 15 of the Central Sales Tax Act, section 7 of the Additional Duties of Excise (Goods of Special Importance) Act and the definition of ‘sugar’ as given in the Central Excises Act, the U.P. Government could impose tax on *khandsari* sugar for the periods (1) 1st April, 1958 to 30th September, 1958, and (2) 1st October, 1958 to 28th February, 1959?” *Held*, that the word “successive” in section 3-A included the first dealer and that the U.P. Government could impose sales tax on *khandsari* sugar for the periods (1) 1st April, 1958 to 30th September, 1958, and (2) 1st October, 1958 to 28th February, 1959. The word “successive” used in section 3-A of the Uttar Pradesh Sales Tax Act, 1948, is used with a plural substantive (dealers) and therefore a manufacturer-dealer is one of “successive dealers” and can be selected by the State Government for being taxed. Whether a sale is the first sale or the last sale is a question of fact. The very first sale can be the last sale; if there is only one sale it is both the first and the last sale. The question of selecting the sale to be taxed arises only if there is a series of sales in the State; it is then only that the last sale is to be taxed. If there is only one sale the question of selection does not arise and if sales tax has to be levied it has to be levied on that sale. Enforcement of section 15 of the Central Sales Tax Act, 1956, might be required for finding what restrictions and conditions were imposed but not for finding what restrictions and conditions were specified in it. The effect of a statute not being brought into force on another statute which refers to a provision of it is exactly the same as that of its repeal. Therefore the fact that section 15 of the Central Sales Tax Act, 1956, was not brought into force prior to 1st October, 1958, does not mean that section 7 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957, cannot be given effect to. As the effect of the reference in section 7 to the provisions of section 15 is the same as that of reproduction of the provisions of section 15 in section 7, what is material is the coming into force of section 7 and not the coming into force of section 15. As soon as section 7 came into force one could refer to the provisions of section 15 for ascertaining the restrictions and conditions, even though section 15 itself had not come into force. The restrictions and conditions specified in section 15 prior to its amendment by Act 31 of 1958 were made applicable by section 7. The subsequent amendment of section 15 did not affect the restrictions and conditions which were

made applicable by section 7 just as the very repeal of section 15 would not have affected them. A notification issued in exercise of a power conferred by a statute has statutory force and validity, and its provisions are to be treated as if they were contained in the statute itself. On the enactment of section 7 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957, Notification No. 418/X-902(9)-52 dated the 31st January, 1957, did not become a dead letter. It remained valid and continued to exist in the eye of law; such provisions of it as were inconsistent with the provisions of section 15 could not be given effect to and this was all that happened on the enactment of section 7. Provisions of it which were not inconsistent with section 15 were to be given effect to. The words "inter-State trade" in Article 286(3) of the Constitution are used only with reference to the declaration by Parliament and not with reference to the imposition of a tax by a State Sales Tax Act. What is required for the applicability of the provisions is a declaration by Parliament that certain goods are of special importance in inter-State trade. Therefore in deciding whether a State Sales Tax Act is subject to the restrictions and conditions specified in an Act enacted by Parliament, it is irrelevant to consider whether a particular sale is an inter-State sale or an intra-State sale. Sugar is declared goods and, therefore, the Uttar Pradesh Sales Tax Act, 1948, imposing a tax on all sales of it, and not merely or inter-State sales of it, is subject to the restrictions and conditions specified in an Act enacted by Parliament. If the Additional Duties of Excise (Goods of Special Importance) Act, 1957, did not impose additional Central excise duty on sugar the modification done through the Notification No. 4485/X dated the 14th December, 1957, did not apply and the original notification dated 31st January, 1957, continued to apply, i.e., sales tax continued to be payable under it. *Dilip Kumar Mukherjee v. Commercial Tax Officer* [1965] (A.I.R. 1965 Cal. 498) dissented from. *Chhotabhai Jethabhai Patel and Co. v. State of Uttar Pradesh* [1962] (A.I.R. 1962 S.C. 1614) followed.—*RAM KUMAR RAJENDRA SWAROOP v. COMMISSIONER OF SALES TAX* [1967] 19 S.T.C. 241 (All.).

—**Sec. 15(b)—Declared goods—Right to refund of State tax when goods are sold in the course of inter-State trade—Rule prescribing condition that tax has to be paid under Central Act before claiming refund—Validity—Whether ultra vires rule-making authority—Mysore Sales Tax Act (25 of 1957), Sec. 5(4)—Mysore Sales Tax Rules, 1957, Rule 39-A.**—Under section 15(b) of the Central Sales Tax Act, 1956, the right to receive refund of State tax, if any, paid in respect of declared goods is acquired the

moment the said goods are sold in the course of inter-State trade. Actual payment of tax under the Central Sales Tax Act in respect of the said sale is neither specifically mentioned in the section nor is it capable of being implied in the language of the section. Therefore to say further, as rule 39-A(1) of the Mysore Sales Tax Rules, 1957, says, that the assessee claiming refund must have paid tax under the Central Sales Tax Act in respect of such sale, is to add a further condition precedent to the acquisition of the right to refund itself. Such a result cannot be achieved in exercise of the powers given to prescribe conditions subject to which the refund may be claimed. Such conditions to be valid, must be conditions which do not add to the condition precedent to the acquisition of right to refund, but may deal with such matters as form of application, time of application, mode of proof, etc. Consequently, the words occurring at the end of rule 39-A(1), viz., "...and has paid tax under the Central Sales Tax Act, 1956 (Central Act 74 of 1956), in respect of such sale" should be struck down as *ultra vires* the rule-making authority. Similarly the words occurring at the end of the proviso to section 5(4) of the Act before amendment by the amending Act 29 of 1961, viz., "...on production of proof that the subsequent sale has been subjected to the tax under the Central Sales Tax Act, 1956..." were ineffective and inoperative for the period during which the said proviso was in force. Rule 39-A(3) is however not beyond the power of the rule-making authority. *The State of Mysore v. Yaddalam Lakshminarasimhaiah Setty and Sons* [1965] (16 S.T.C. 231) referred to.—*MUNSHI ABDUL RAHIMAN AND BROS. AND ANOTHER v. COMMERCIAL TAX OFFICER, I CIRCLE, HUBLI, AND OTHERS* [1967] 20 S.T.C. 89 (Mys.).

—**Sec. 15—Refund—Declared goods—Sale in the course of inter-State trade—Application for refund of tax levied under local Act—Rule prescribing period of limitation—Validity—Whether ultra vires State Government—Whether tax should be collected to claim refund—Madras General Sales Tax Act (1 of 1959), Sec. 4.**—Where an Act does not provide for limitation with reference to a particular matter and the delegation of the power to make rules is conferred by a section of the Act, which does not, expressly or impliedly, relate to the power of prescribing time, the authority to which the power is delegated cannot make a rule prescribing limitation. Therefore as the proviso to section 4 of the Madras General Sales Tax Act, 1959, does not prescribe any limitation for refund of tax levied on declared goods, rule 23(3)(i) of the Madras General Sales Tax Rules, 1959, prescribing a period of limitation for that refund is invalid and *ultra vires* the State Government. A dealer

who had filed an application for refund of tax under the proviso to section 4 (prior to the date when section 4-A was inserted in the principal Act) would be entitled to claim refund as soon as tax was levied under the Act. It was not necessary for him to claim refund after he actually paid the tax.—*P. THIRUMURTHI CHETTIAR v. THE STATE OF MADRAS AND ANOTHER* [1968] 21 S.T.C. 489 (Mad.).

CENTRIFUGAL WATER PUMPS

Whether agricultural implements and exempt from sales tax.—See *DELTA ENGINEERING CO. PRIVATE LTD. v. COMMISSIONER OF SALES TAX* [1963] 14 S.T.C. 515. (All.).

CERTIFICATE OF REGISTRATION

(See REGISTERED DEALER and CENTRAL SALES TAX ACT.)

CHANGE OF LAW

See also under the following headings:—

APPEALS	OFFENCES
ASSESSMENT	REASSESSMENT
LIMITATION	REVISION

Appeal and revision—Whether vested rights—Change of law—Applicability of new law.—See *APPEALS* page 42 *supra*.

Appeal—Right of appeal—Initiation of assessment proceedings before amendment but completion of assessment after amendment—Applicability of new law.—See *APPEALS* pages 40-41 *supra*.

—Appeal under old Act disposed of by Appellate Assistant Commissioner after repeal of that Act by 1963 Act—Power of Deputy Commissioner to revise order passed in appeal by Appellate Assistant Commissioner—*Kerala General Sales Tax Act* (15 of 1963), Sec. 35—*General Sales Tax Act* (11 of 1125), Sec. 15.—*PARAMU v. SALES TAX OFFICER, SPECIAL CIRCLE, QUILON* [1967] 19 S.T.C. 138 (Ker.).

—Appeal to Appellate Assistant Commissioner of Commercial Taxes—Assessment made when 1939 Act was in force—Repeal of 1939 Act by 1 of 1959—Power of appellate officer to enhance turnover—*Madras General Sales Tax Act* (9 of 1939)—*Madras General Sales Tax Act* (1 of 1959), Sec. 61.—*STATE OF MADRAS v. LATHEEF HAMEED & Co.*, *MADRAS-3* [1968] 21 S.T.C. 476 (Mad.).

Applicability of Act to pending proceedings—Exemption of contracts of sale entered into before certain date—*Chotanagpore*—*Bihar Act VI of 1949* amending proviso to section 4(1)—*Notification extending Act VI of 1949 to Chotanagpore*—*Validity*—*Applicability of Act VI of 1949 to proceedings commenced in October, 1948*.—*THE STATE OF BIHAR v. S. S. MUKHERJEE* [1954] 5 S.T.C. 377 (Pat.).

Applicability of amended law to pending proceedings.—A Tribunal called upon to decide a taxing dispute must apply the relevant law applicable to a particular transaction to which the problem relates, and that law normally is the law applicable as on the date on which the transaction in dispute has taken place. If the law which the Tribunal seeks to apply to the dispute is amended, so as to make the law applicable to the transaction in dispute, it would be bound to decide the question in the light of the law so amended. Similarly when the question has been referred to the High Court and in the meanwhile the law has been amended with retroactive operation, it would be the duty of the High Court to apply the law so amended if it applies. By taking notice of the law which has been substituted for the original provision, the High Court is giving effect to legislative intent and, does no more than what must be deemed to be necessarily implicit in the question referred by the Tribunal, provided the question is couched in terms of sufficient amplitude to cover an enquiry into the question in the light of the amended law, and the enquiry does not necessitate investigation of fresh facts. If the question is not so couched as to invite the High Court to decide the question in the light of the law as amended or if it necessitates investigation of facts which have not been investigated, the High Court may refuse to answer the question. Application of the relevant law to a problem raised by the reference before the High Court is not normally excluded merely because at the date when the Tribunal decided the question the relevant law was not or could not be brought to its notice. There is nothing so peculiar in the nature of a reference under the *Indian Income-tax Act* or the *Sales Tax Acts* that in deciding it the High Court is restricted to the application of the law which has been superseded by legislation since the date when the reference was made by the Tax Tribunal and is obliged to refuse to apply the law which by legislative direction has to be applied to a particular transaction which is the subject-matter of the reference. The assessee-company was a manufacturer of cotton yarn and it had opted to be assessed on the basis of the turnover of the previous year under section 7 of the *U.P. Sales Tax Act, 1948*. The rate of tax on cotton yarn was then 3 pies in the rupee. On 9th June, 1948, the Government issued a notification under section 3-A by which sales of cotton yarn by manufacturers of cotton yarn became taxable at 6 pies per rupee. For the assessment year 1948-49, the assessee contended that the assessment should be made at the uniform rate of 3 pies per rupee throughout the year but the Sales Tax

Officer held that the rate of 3 pies per rupee was only to apply for the first 69 days of the assessment year and the rate of 6 pies per rupee was to apply for the rest of the year as per the notification. At the instance of the assessee a reference was made to the High Court by the Judge (Revisions) and the High Court following its judgment in *Modi Food Products Ltd. v. Commissioner of Sales Tax, U.P.* [1955] (6 S.T.C. 287) held in favour of the assessee. With special leave, the Commissioner of Sales Tax appealed to the Supreme Court. In the meantime the Supreme Court held in *Commissioner of Sales Tax, U.P. v. Modi Sugar Mills Ltd.* [1961] (12 S.T.C. 182) that where an assessee had elected to submit his return on the turnover of the previous year under section 7, he was liable to be assessed to sales tax at the rate in force on the first day of the year of assessment, because the liability arose on that date, and any subsequent enhancement of the rate by virtue of a notification under section 3-A did not alter that liability. Subsequent to this decision the Legislature passed the Uttar Pradesh Bikri Kar (Sanshodhan) Adhiniyam, 1962, inserting a new section 31 in the U.P. Sales Tax Act, 1948, which declared that notwithstanding the option exercised by the assessee the tax would have to be computed in the light of the rates prevailing in 1948-49 as if they were projected upon the turnover of the previous year. This amendment was also given retrospective operation. The assessee contended that the Supreme Court exercised only an advisory jurisdiction and its advice could be tendered only on the question referred in the light of the law as was applicable at the date when the reference was made and it could not give its opinion based on any subsequent amendment of the Act: *Held*, (1) that the view expressed by the Supreme Court had been modified by express legislation operative retrospectively and therefore the liability to tax of the turnover of the previous year which was regarded as the fictional turnover of the year of assessment had to be determined on the basis that the rates applicable in the year of assessment were fictionally projected on the taxable turnover; (2) that the Supreme Court in giving its opinion on the question in the light of the Amending Act was seeking to apply a legislative provision which was, by express enactment, in force at the time when the liability arose, for sec. 31 enacted by Act III of 1963 was to be deemed to have been in operation at all material times in supersession of the previous rule declared by the Supreme Court. The Supreme Court was, therefore, not seeking to apply any law to the question posed before the High Court which was not in force on the date

of the transaction which was the subject-matter of the reference. *Chatturam Horilram Ltd. v. Commissioner of Income-tax, Bihar and Orissa* ([1955] 2 S.C.R. 290; 27 I.T.R. 709) and *Rampur Distillery Chemical Works Ltd. v. Commissioner of Income-tax, U.P.* (I. T. Reference No. 362 of 1958 decided on January 17, 1964) distinguished. —COMMISSIONER OF SALES TAX, U.P. *v.* BIJLI COTTON MILLS, HATHRAS, U.P. [1964] 15 S.T.C. 656 (S.C.).

Assessment for periods prior to Constitution—Disposal of appeal after Constitution—Whether appeal should be decided by applying Article 286. —See APPEALS page 42 *supra*.

Assessment—Failure to furnish correct returns—*Assessment and imposition of penalty under the Madhya Bharat Sales Tax Act, 1950, after the repeal of that Act by Madhya Pradesh Act—Legality.*—Under the scheme of the Madhya Bharat Sales Tax Act, 1950, a registered dealer is required to file his return at the end of each quarter and he is also required to deposit the sales tax due as per his return. When the Act requires the filing of the returns, it is implicit in the requirement that the returns must state the correct state of affairs. If the registered dealer has not filed a correct return, the obligation to be penalised is incurred at that moment. Whether the returns filed were correct or not may be determined at a future date but that determination has nothing to do with the question of the liability having been incurred. The petitioner, a registered dealer, filed returns under the Madhya Bharat Sales Tax Act, 1950, without furnishing accurate particulars of the turnover in his returns. After the repeal of the Madhya Bharat Act by the Madhya Pradesh Sales Tax Act, 1958, the Sales Tax Authorities assessed the petitioner under the Madhya Bharat Act and also imposed a penalty on him under that Act. On the question whether the imposition of penalty on the petitioner under the Madhya Bharat Act was legal: *Held*, that the case fell within the first part of the proviso of section 52 of the Madhya Pradesh General Sales Tax Act, 1958, and therefore the Sales Tax Authorities were right in not only assessing the petitioner under the Madhya Bharat Act but also in imposing the penalty on him under that Act. The fact that there is no provision in the Madhya Pradesh General Sales Tax Act, 1958, corresponding to section 14(1)(e) of the Madhya Bharat Act is of no consequence. *Hanumanprasad v. Sales Tax Officer, Jabalpur* [1963] (1963 M.P.L.J. 421; 14 S.T.C. 507) referred to.—RATANLAL HUKUMCHAND *v.* ADDITIONAL COMMISSIONER OF SALES TAX, MADHYA PRADESH, INDORE, AND ANOTHER [1967] 19 S.T.C. 92 (M.P.).

Board of Revenue—Whether can take into account change of law and revise order passed by Deputy Commissioner.—See *ROHTAS INDUSTRIES LTD. v. STATE OF ANDHRA PRADESH* [1961] 12 S.T.C. 693 (A.P.).

Deputy Commissioner of Commercial Taxes becoming appellate authority—Whether has power to rectify mistake committed by Commercial Tax Officer.—See *STATE OF ANDHRA v. CHIPPADA GOVARAJAH* [1960] 11 S.T.C. 207 (A.P.).

High Court—Power of High Court to take note of change in law and set aside order of Tribunal.—See *STATE OF MADRAS v. ASHER TEXTILES LTD.* [1959] 10 S.T.C. 584 (Mad.).

Initiation of assessment proceedings prior to amendment—Revision by Commissioner—Applicability of new law.—See *VISHANJI v. STATE OF BIHAR* [1961] 12 S.T.C. 226 (Pat.).

Limitation—Period of limitation enlarged before right to reassess is barred—Applicability of new law.—See *MUNAGA PERAIAH v. THE STATE OF ANDHRA PRADESH* [1962] 13 S.T.C. 26 (A.P.); *IMMIDISSETTI RAMAKRISHNAIAH v. THE STATE OF ANDHRA PRADESH* [1962] 13 S.T.C. 914 (A.P.); *HANUMANPRASAD v. SALES TAX OFFICER, CIRCLE No. 1, JABALPUR* [1963] 14 S.T.C. 507 (M.P.) affirmed in [1967] 19 S.T.C. 87 (S.C.).

—Revision—Limitation for revision enacted for first time—Effect—U.P. Sales Tax Act (15 of 1948), Sec. 10.—*KHEM CHAND KESHRIAL v. COMMISSIONER OF SALES TAX, U.P., LUCKNOW* [1967] 19 S.T.C. 71 (All.).

—Assessment order passed after new Act came into force—Reassessment—Limitation—Whether period prescribed under new Act or repealed Act—C. P. and Berar Sales Tax Act (21 of 1947), Secs. 11(4)(a), 11A(1)—*Madhya Pradesh General Sales Tax Act* (2 of 1959), Secs. 19(1), 52.—*THE SALES TAX OFFICER, CIRCLE 1, JABALPUR v. HANUMAN PRASAD* [1967] 19 S.T.C. 87 (S.C.).

—Repeal of Madras Act by Andhra Pradesh Act—Additional assessments for periods when Madras Act was in force—Whether can be made under Andhra Pradesh Act—Limitation enlarged by Andhra Pradesh Act before assessment became final—Applicability of enlarged period—*Andhra Pradesh General Sales Tax Act* (6 of 1957), Secs. 14(4), (4-A), 41—*Madras General Sales Tax Rules, 1939, rule 17.*—*T. K. KHADAR MOHIUDDIN v. STATE OF ANDHRA PRADESH* [1968] 21 S.T.C. 45 (A.P.).

—Escaped turnover under repealed Act assessed after commencement of new Act—Legality—Limitation—*Kerala General Sales Tax Act* (11 of 1125)—*Kerala General Sales Tax Act* (15 of 1963), Sec. 61(1)—*General Sales Tax Rules, 1950,*

Rule 33(1).—*ARYA VAIDYA PHARMACY LTD., PALGHAT v. STATE OF KERALA* [1968] 21 S.T.C. 357 (Ker.).

Repeal of enactment—Whether liability under repealed statute limited to cases where assessment is made before repeal.—Both section 9(2) of Madras Act II of 1958 and section 8 of the Madras General Clauses Act, 1891, sufficiently keep alive the liability of an assessee to pay the additional tax under the Madras Medium Cotton Mill Cloth (Sales Tax) Act (XLI of 1954). The operation of section 9 cannot be confined to cases where there has been a determination and quantification of the tax before 1st April, 1958. The object and purpose of giving effect to the repealing provision [section 9] only on and from 1st April, 1958, must be to subject the dealers to the additional levy under Madras Act XLI of 1954 in respect of transactions throughout the financial year from 1st April, 1957 to 31st March, 1958. The taxable event under the Madras General Sales Tax Act, 1939, is either sale or purchase and the scheme of the Act is that each transaction of sale or purchase by a dealer attracts tax at the point of time when the transactions take place though for the purpose of convenience the computation of the turnover is made annually. The liability to pay tax therefore arises on the happening of the taxable event though collection may be postponed till after the total turnover is determined, the tax levied and the actual demand made. A sum of money is said to be payable when a person is under an obligation to pay it. The word "payable" may therefore signify an obligation to pay at a future time. *Whitney v. Inland Revenue Commissioners* ([1926] A.C. 37) referred to.—*A. P. MARIAPPA MUDALIAR v. THE STATE OF MADRAS* [1962] 13 S.T.C. 746 (Mad.).

Repeal of statutes—Whether assessee could be assessed to tax after repeal of statute.—See *BUDHAN KHAN v. STATE OF ANDHRA PRADESH* [1961] 12 S.T.C. 829 (A.P.) and *SRI DAMMA PEDDA YELLAPPA, NANDYAL v. THE STATE OF ANDHRA PRADESH* [1960] 11 S.T.C. 691 (A.P.).

Repeal of statutes—Liability to pay tax—"Liability already incurred" in section 41, Andhra Pradesh Act—Meaning of—Whether assessment can be made under Andhra Pradesh Act in respect of transactions made when Madras General Sales Tax Act was in force.—The moment a dealer makes either purchases or sales which are subject to tax, the obligation to pay the tax has arisen and taxability is attracted. Although that liability cannot be enforced till the quantification is effected by assessment proceedings the liability for payment of tax is independent of the assessment.

The expression "liability already incurred thereunder" in the proviso to section 41 of the Andhra Pradesh General Sales Tax Act, 1957, denotes the taxability, *i.e.*, the chargeability to tax and not the quantification of the tax or the payment thereof. The declaration of liability by the statute and the quantification thereof are two different stages in the imposition of tax but the declaration of liability implies the liability to pay. The specific purpose of the proviso to section 41 is to keep alive the rights acquired and the liabilities incurred under the repealed Acts. Therefore the proviso protects all obligations incurred by virtue of purchases or sales made under the repealed Acts and it is therefore open to the department to quantify that obligation or liability by making the assessment and to collect it and, in the event of failure in making the payment, to have resort to the machinery set up for the collection of the tax. *Chakoo Bhai Ghelabhai v. The State of Orissa and Others* [1956] (7 S.T.C. 36) dissented from. *Budhan Khan v. State of Andhra Pradesh and Others* [1961] (12 S.T.C. 829), *Sri Damma Pedda Yellappa, Nandyal v. The State of Andhra Pradesh* [1960] (11 S.T.C. 691) and *Chatturam and Others v. Commissioner of Income-tax, Bihar* [1947] (15 I.T.R. 302) relied on. *Chatturam Horilram Ltd. v. Commissioner of Income-tax, Bihar and Orissa* [1955] (27 I.T.R. 709) explained.—*K. KANNAIAH v. DEPUTY COMMERCIAL TAX OFFICER, GUNTUR-1, AND OTHERS* [1964] 15 S.T.C. 689 (A.P.).

—See also *M. ABRAMAI v. COMMISSIONER OF SALES TAX, KERALA STATE* [1958] 9 S.T.C. 780 (Ker.), *CHAKOO BHAI GHELABHAI v. THE STATE OF ORISSA AND OTHERS* [1956] 7 S.T.C. 36 (Ori.) reversed by Supreme Court in [1960] 11 S.T.C. 716, at page 82 *supra*.

Retrospective operation of statute.—A statute is not retrospective simply because a part of the requisites for its action is drawn from a time antecedent to its passing.—*VARKEY THOMAS v. STATE OF KERALA* [1960] 11 S.T.C. 111 (Ker.).

—Where the repeal of a statute is followed by fresh legislation on the same subject, the line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities, but whether it manifests an intention to destroy them.—*THE STATE OF KERALA v. N. SAMI IYER* [1966] 17 S.T.C. 338 (S.C.).

CHARGE OF TAX

(See also ASSESSMENT, CONSTITUTION OF INDIA and CHANGE OF LAW.)

In imposing sales tax one of the difficulties which confront the Legislature lies in the selection

of the point of time at which the tax shall attach and become due. In the case of an ordinary retail sale for cash across the counter of a shop, the stages of agreement, appropriation of the goods to the contract, delivery, payment of the price and passing of the property are all practically simultaneous. But in more complicated transactions for the sale of goods to be produced or manufactured these stages may be spaced in time in various ways. Where the point of time which the Legislature has selected as in general the time for imposing, levying and collecting sales tax is the time of the delivery of the goods to the purchaser, liability for the tax is not made dependent on the price being paid, for the goods may be delivered on credit and the purchaser may default in payment.—*THE KING v. DOMINION ENGINEERING CO., LTD.* [1951] 2 S.T.C. 67 (P.C.).

—One of the essential requisites of a transaction of sale of goods is the passing of title from one party to the other for a price in money paid or promised. It is the duty of the taxing authorities to examine all the facts involved in a transaction and ascertain whether, as a fact, there has been a sale, whether the sale relates to "goods" as defined in the Act, and whether the party to the sale satisfied the definition of the word "dealer". Unless all these elements are satisfied it cannot be said that the liability to tax has been incurred.—*KRISHNA CHANDRA ACHARYA v. THE BOARD OF REVENUE, ORISSA* [1955] 6 S.T.C. 400 (Ori.).

—The liability to sales tax is created by the charging sections and the assessment order only quantifies that liability.—*TATA IRON AND STEEL CO. LTD. v. THE STATE OF BIHAR* [1956] 7 S.T.C. 158 (Pat.) affirmed by Supreme Court in [1958] 9 S.T.C. 267 (S.C.).

—The liability to pay the tax is created by the charging section and that liability remains. All that the rule of limitation which is introduced in a taxing statute does is to take away the right of the department to claim the tax. If the law is at any time amended, then the rule of limitation disappears, more so, when the law itself makes the new rule of limitation applicable from the commencement of the parent Act.—*KANHAYYALAL SHIVSAHAY SHARMA v. DEPUTY COMMISSIONER OF SALES TAX, M.P., AND OTHERS* [1958] 9 S.T.C. 503 (M.P.).

—Section 13 of the Bihar Sales Tax Act, 1947, imposes no charge on the subject. The liability to pay sales tax is founded upon sections 4 and 5 which are the charging sections. The jurisdiction to assess and the liability to pay tax do not depend on the issue or non-issue of the notice

under section 13.—*SHRI PARWATIJI MILLS v. THE STATE OF BIHAR* [1957] 8 S.T.C. 653 (Pat.).

—The taxable event under the Madras General Sales Tax Act, 1939, is either sale or purchase and the scheme of the Act is that each transaction of sale or purchase by a dealer attracts tax at the point of time when the transactions take place though for purpose of convenience the computation of turnover is made annually. The liability to pay tax therefore arises on the happening of the taxable event though collection may be postponed till after the total turnover is determined, the tax levied and the actual demand made.—*A. P. MARIAPPA MUDALIAR v. THE STATE OF MADRAS* [1962] 13 S.T.C. 746 (Mad.).

—The moment a dealer makes either purchases or sales which are subject to tax, the obligation to pay the tax has arisen and the liability is attracted. Although the liability cannot be enforced till the quantification is effected by assessment proceedings the liability for payment of tax is independent of the assessment.—*K. KANNAIAH v. DEPUTY COMMERCIAL TAX OFFICER, GUNTUR AND OTHERS* [1964] 15 S.T.C. 689 (A.P.).

—*Levy and collection—Distinction.*—There is a distinction between a levy under the charging provisions of the Madras General Sales Tax Act, 1939, whereby a dealer becomes liable to pay the tax which the statute imposed and the further proceeding relating to the collection of the tax.—*A. S. KASSAM AND Co., MADURAI v. THE STATE OF MADRAS* [1962] 13 S.T.C. 907 (Mad.).

—*Accrual of liability and how it is to be assessed.*—The accrual of liability to pay tax is one matter, but the quantum or rate of tax to be assessed or how it is to be assessed is quite a different matter. It is possible under the law to hold that a dealer is liable to tax, because the turnover exceeds a certain amount and to assess the amount of tax by applying a certain rate to a smaller figure.—*COMMISSIONER OF SALES TAX, U.P., LUCKNOW v. BALBIR SINGH AND Co.* [1963] 14 S.T.C. 546 (All.).

—In examining the question of the liability of an assessee to sales tax the Court must look at the substance of the transaction and not at the mere form in which the assessee granted receipts or kept his accounts.—*DAYABHAI GOKULBHAI PATEL v. STATE OF BIHAR* [1959] 10 S.T.C. 483 (Pat.).

—*Liability to tax—Claim for immunity under prior taxing law.*—If an assessee comes within the ambit of the taxing enactment and the rules framed thereunder in any particular year he cannot plead immunity from assessment on the

basis of a prior taxing law which is no longer in operation, or on the hypothesis or supposition of tax liability that might have been imposed but was not in fact imposed.—*M. R. K. ABDUL SALAM & Co. v. THE GOVERNMENT OF MADRAS* [1962] 13 S.T.C. 629 (Mad.).

Liability to pay tax on last purchase.—"It is true that sections 3 and 4 of the Madras General Sales Tax Act, 1959, speak of 'a year', i.e., the financial year, and it is only the turnover during that year that is liable to taxation in the hands of the assessee, but section 4 has to be read with the Second Schedule, and reading section 4 with the Second Schedule, it seems to us clear that a dealer is not liable to pay a tax on the purchases until the purchases acquire the quality of being the last purchases inside the State. In other words, when he files his return and declares the stock in hand, the stock in hand cannot be said to have been acquired by last purchase because he may still during the next assessment year sell it or he may consume it himself or the goods may be destroyed etc. He would be entitled to claim before the assessing authorities that the character of acquisition of the stock in hand was undetermined; in the light of subsequent events it may or may not become the last purchase inside the State."—*THE STATE OF MADRAS v. T. NARAYANASWAMI NAIDU AND ANOTHER* [1968] 21 S.T.C. 1 (S.C.).

Charging section.—The core of a taxing statute is in the charging section and the provisions levying such a tax and defining persons who are liable to pay such tax. If that core disappears, the remaining provisions have no efficacy.—*PER SUBBA RAO, C. J., SHELAT and MITTER, JJ., in B. SHAMA RAO v. THE UNION TERRITORY OF PONDICHERRY* [1967] 20 S.T.C. 215 (S.C.).

—While dealing with the charging section there is no question of intendment or equity. Unless charge is created by a specific provision of the statute the taxpayer cannot be taxed on an ambiguous provision.—*CHAMPAKLAL SOHANLAL v. J. H. SHAH, SALES TAX OFFICER, ENFORCEMENT BRANCH, AHMEDABAD* [1968] 22 S.T.C. 507 (Guj.).

Imposing and authorising the imposition of tax.—"As pointed out by RAMACHANDRA IYER, J., in *Sreenivas and Co. v. Deputy Commercial Tax Officer* [1960] (11 S.T.C. 68, 75-77, on appeal from [1959] 10 S.T.C. 171), the decisions on the interpretation of section 55 of the Australian Constitution are not a reliable guide to the interpretation of the words 'imposing or authorising the imposition of a tax' in Article 286(3) of the Constitution and section 3 of Central Act No. 52 of 1952. Section 55 which is directed to preserving the

privileges of the House of Representatives with respect to finance and providing against their abuse has received a somewhat narrow interpretation from the Australian Courts. See the cases collected in Wynes' Legislative, Executive and Judicial Powers, 3rd Edition, page 240. We may add that the observations of Isacss, J., in *Federal Commissioner of Taxation v. Munro* (38 C.L.R. 153, 189) suggest that an Act naming the rate but leaving the persons on whom the tax should fall to be thereafter determined would be a measure 'imposing taxation' even for the purposes of section 55. Nor is much light thrown on the interpretation of those words by the decisions under the Indian Income-tax Act. In *Messrs Chatturam Horilram Ltd. v. Commissioner of Income-tax, Bihar and Orissa* [1955] (27 I.T.R. 709) this Court held that income was chargeable under section 3 of the Indian Income-tax Act though the Finance Act was not extended to the relevant area during the year in question. In *Kesoram Industries v. Commissioner of Wealth-tax* [1966] (59 I.T.R. 767) this Court by a majority following the dicta in *Wallace Brothers and Co. Ltd. v. Commissioner of Income-tax, Bombay* [1948] (16 I.T.R. 240, 244), *Chatturam v. Commissioner of Income-tax, Bihar* [1947] (15 I.T.R. 302, 308) and explaining the dicta in *Commissioner of Income-tax v. Western India Turf Club Ltd.* [1928] (L.R. 55 I.A. 14, 17) and *Maharaja of Pithapuram v. Commissioner of Income-tax, Madras* [1945] (13 I.T.R. 221, 223-224) held that there was a liability to pay income-tax and a debt owed by the assessee in respect of income-tax on the last day of the accounting year within the meaning of section 2(m) of the Wealth-tax Act, 1957. None of these decisions dealt with the construction of the words 'imposing or authorising the imposition of a tax' in Article 286(3) of the Constitution. It is remarkable, however, that in the *Maharaja of Pithapuram's* case, the language used by Lord Thankerton suggests that the income-tax is imposed for a particular fiscal year by a Finance Act and in *Chatturam Horilram's* case, Jagannadhadas, J., said that the Finance Act of each year imposed the obligation for the payment of a determinate sum for each such year. Moreover, in *Luipaard's Vlei Estate and Gold Mining Co. Ltd. v. Commissioners of Inland Revenue* [1930] (15 T.C. 573, 581), Rowlatt, J., said that the English income-tax was annually imposed by the Finance Act and in *Bowles v. Bank of England* ([1913] 1 Ch. 57, 87), Parker, J., held that the Crown could not lawfully levy income-tax before the rate of tax was ascertained and the tax was actually imposed by an Act of Parliament. These dicta suggest that an Act

fixing the rate of tax is a law imposing a tax. The specification of the class or classes of persons liable to pay the tax and the fixation of the rate of tax are both necessary for the imposition of a tax. Section 4 of the East Punjab Act No. 46 of 1948 took the first step for imposing the tax. It declared who were the persons liable to pay tax under the Act. But section 5 of the East Punjab Act No. 46 of 1948 was invalid and until the passing of the East Punjab Act No. 19 of 1952 and the insertion of the amended section 5 there was no provision in the main Act fixing or authorising the fixation of the rate at which the tax was to be levied. In the absence of such a provision, there could be no levy, assessment and collection of the tax from the dealer and section 4 remained unenforceable. The East Punjab Act No. 19 of 1952 by inserting the amended section 5 in the main Act for the first time provided for the levy on the taxable turnover of every dealer a tax at a rate to be fixed by the State Government. The rate of tax could be fixed and the tax could be actually imposed under the amended section 5 only. The East Punjab Act No. 19 of 1952 therefore belonged to the category of laws authorising the imposition of a tax on the sale of goods."—*THE STATE OF PUNJAB v. SANSARI MAL PURAN CHAND* [1968] 21 S.T.C. 91 at pages 97-99 (S.C.).

—*Charging section and section fixing rate.*—"The only difference between the Income-tax Act and the present Act (Punjab General Sales Tax Act, 1948) is that while in the Income-tax Act section 3 thereof does not expressly make the liability subject to the provisions of the Finance Act which fixes the rate, under the Sales Tax Act in question section 4 thereof in terms is made subject to section 5. But under both the Acts there is a clear distinction between chargeability and the quantification of tax. While it is true that the tax cannot be realised without it being quantified, the non-quantification of the liability will not destroy the liability under the charging section. The liability has to be distinguished from its enforceability. It cannot be said, and indeed it is not said, that the Income-tax Act has no legal existence till the Finance Act is made, though till the Finance Act is made it cannot be enforced. But reliance is placed on section 67B of the Income-tax Act in support of the contention that its existence in the statute book keeps the Act alive, for the rate prescribed by the previous Finance Act is applicable till the new Finance Act is passed. But it will be noticed that the Court's decision was not based on the existence of the said provision but on that of the charging section itself. It follows that striking

out section 5 does not make section 4 void, though till an appropriate section is inserted it remains unenforceable.”—*DEVI DASS GOPAL KRISHNAN v. STATE OF PUNJAB* [1967] 20 S.T.C. 430 at page 441 (S.C.).

—*Levy, assessment, collection—Meanings of.*—“Now, it is necessary to examine the meaning of the word ‘levy’ in taxation laws because the argument on behalf of the petitioners has proceeded on the premises that there is levy of purchase tax at multiple stages as each purchaser has initially to pay it though later on he may be able to claim a refund if he satisfies the conditions of sub-clause (vi) of section 5(2)(a). It has been urged by counsel for the petitioners that levy would include collection. Our attention has been invited to section 15(b) of the Central Act of 1956 where the word ‘levy’ has been used in the sense of ‘collect’ as in the context it can admit of no other interpretation. In *Hazari Mal Kuthiala v. Income-tax Officer* [1956] (30 I.T.R. 500), Bhandari, C.J., delivering the judgment of the Bench examined the meaning of the expressions ‘levy’, ‘assessment’ and ‘collection’ in section 13 of the Finance Act. His discussion may be reproduced in his own words: ‘To “levy” a tax means “to impose or assess” or “to impose, assess or collect under the authority of law”. It is a unilateral act of superior legislative power to declare the subjects and rates of taxation and to authorise the Collector to proceed to collect the tax. “Assessment” is the official determination of liability of a person to pay a particular tax. “Collection” is the power to gather in money for taxes, by enforced payment if necessary. The levy of taxes is generally a legislative function; assessment is a quasi-judicial function and collection an executive function. These three expressions “levy”, “assessment” and “collection” are of the widest significance and embrace in their broad sweep all the proceedings which can possibly be imagined for raising money by the exercise of the power of taxation from the inception to the conclusion of the proceedings.’ The above statement of law was approved by their Lordships in *A.N. Lakshman Shenoy v. Income-tax Officer* [1958] (34 I.T.R. 275).”—*BHAWANI COTTON MILLS LTD. v. THE STATE OF PUNJAB AND ANOTHER* [1967] 20 S.T.C. 290 at pages 298-299 (S.C.).

—*Necessity to fix stage where incidence of taxation is only once.*—Per Subba Rao, C.J., Shah and Vaidialingam, J.J. (Sikri and Ramaswami, J.J., dissenting)—The provisions of the Punjab General Sales Tax Act, 1948 (as they stood on April 1, 1960), levying purchase tax on declared

goods specified in Schedule C contravene the provisions of section 15(a) of the Central Sales Tax Act, 1956, as the stage at which purchase tax is levied is neither definite nor ascertainable, and there is a possibility of the tax being levied at more than one stage. The mere injunction in the second proviso to section 5(1) that the rate should not be higher than the one fixed in the Central Act and that the levy must be at one stage will be of no avail unless the Act or the Rules framed thereunder make it very clear that there will be no levy or collection of tax except from the persons who are bound to pay in accordance with the Central Act. If the Central Act makes it mandatory that the tax can be collected at only one stage it is not enough for the State to say that a person, who is not liable to pay tax, must nevertheless pay it in the first instance and then claim a refund at a later stage. If a person is not liable for payment of tax at all at any time the collection of a tax from him with a possible contingency of refund at a later stage will not make the original levy valid; because if the sales or purchases are exempt from taxation altogether they can never be taken into account at any stage for the purpose of calculating or arriving at the taxable turnover and for levying tax.—*BHAWANI COTTON MILLS LTD. v. THE STATE OF PUNJAB AND ANOTHER* [1967] 20 S.T.C. 290 (S.C.).

—*Liability under Central Sales Tax Act—An yearly liability.*—“In the present case we are not even concerned with the said section 5 of the Bombay Sales Tax Act, 1953, as the Central Sales Tax Act, 1956, provides its own charging section, viz., section 6, as already stated above. It is to that section that we must, therefore, turn for the purpose of this reference, and if one scrutinises the terms of section 6 of the Central Sales Tax Act, 1956, there can be no doubt whatsoever that the liability or charge which it imposes in respect of inter-State sales tax is yearly liability, for it provides in terms that every dealer shall be liable to pay tax on all sales ‘during any year’. We have, therefore, no hesitation in rejecting the contention of Mr. Banaji that the liability to tax under the Central Act is not yearly liability. It may be mentioned that, even as far as the procedure of assessment is concerned, the assessment under the Central Act which would have to follow the pattern laid down in section 14 of the Bombay Sales Tax Act, 1953, would be yearly assessment for that section clearly provides that every registered dealer is to be assessed separately for ‘each year’. The position, therefore, is that both the liability to tax, as well as the

assessment under the Central Act, would be yearly. The year being the unit, both for the purpose of chargeability as well as for the purpose of assessment proceedings, if any notification comes into force during that year, it must be given effect to as from the beginning of that assessment year."—COMMISSIONER OF SALES TAX *v. COOPER & Co.* [1968] 22 S.T.C. 111 at pages 114-115 (Bom.).

CHECK POSTS

Erection of check posts and barriers to prevent evasion of sales tax.—Validity of provisions and powers of officer thereunder.—See *RAMA TRANSPORT CO. (PRIVATE) LTD. v. THE STATE OF UTTAR PRADESH AND OTHERS* [1957] 8 S.T.C. 725 (All.) and *JAI NARAIN v. ASSISTANT SALES TAX OFFICER* [1957] 8 S.T.C. 795 (All.).

—Confiscation of goods—Necessity to give notice to person affected—Issue of notice and collection of compounding fee from lorry driver—Legality—Madras General Sales Tax Act (1 of 1959), Sec. 42.—*MEENAMBIKA COMPANY v. THE STATE OF MADRAS* [1963] 14 S.T.C. 817 (Mad.).

—Order of confiscation of goods—Option to pay tax and penalty—Whether appeal lies to Appellate Assistant Commissioner—Madras General Sales Tax Act (1 of 1959), Secs. 31, 32.—DEPUTY COMMISSIONER (C.T.), COIMBATORE DIVISION *v. S. KRISHNASWAMI CHETTIAR* [1963] 14 S.T.C. 598 (Mad.).

—Transport of goods without carrying necessary documents—Notice issued for confiscating goods—No inquiry by officer and no opportunity given to owner of goods—Legality of notice—Conditions precedent for taking action by way of confiscation—General Sales Tax Act (11 of 1125), Sec. 16A(1) to (5), proviso.—*KESAVA PANICKER AND OTHERS v. STATE OF KERALA AND ANOTHER* [1962] 13 S.T.C. 170 (Ker.).

—Erection of check posts and barriers—Provisions in section 28-A, Mysore Act—Whether *ultra vires* Legislature—Whether impose unreasonable restriction on fundamental rights of individuals—Mysore Sales Tax Act (25 of 1957), Sec. 28-A—Constitution of India, Articles 19(1)(g), 301, 304; Schedule VII, List II, Entry 54.—*P. VENKATACHALAPATHI AND OTHERS v. COMMERCIAL TAX INSPECTOR, INTELLIGENCE SECTION, AND OTHERS* [1965] 16 S.T.C. 894 (Mys.).

—Confiscation—Penalty in lieu of confiscation—Collection of penalty from owner of lorry—Legality—Necessity to record finding that owner of lorry is dealer or owner of goods—Madras General Sales Tax Act (1 of 1959), Sec. 42(3)—Madras General Sales Tax Rules, 1959, Rules 35, 36(2).—*A. B. A. AZEEZ KHAN SAHIB v. THE STATE OF MADRAS* [1967] 20 S.T.C. 213 (Mad.).

—Validity of provisions relating to check posts and barriers—Constitution of India, Arts. 14, 301.—*Kerala General Sales Tax Act* (15 of 1963), Secs. 29, 30, 31.—*SREE NARAYANA TRANSPORTS v. STATE OF KERALA* [1965] 16 S.T.C. 659 (Ker.).

—Seizure and confiscation under section 42(3), Madras General Sales Tax Act (1 of 1959)—Legality.—*K. P. ABDULLA AND BROS. v. CHECK POST OFFICER, KANDAIGOUNDANCHAVADI, COIMBATORE* [1968] 22 S.T.C. 260 (Mad.). On appeal this decision was reversed.

—Power to seize and confiscate goods—Whether ancillary or incidental power to levy sales tax—Provisions of section 42(3) providing for seizure and confiscation—Whether unconstitutional and invalid—Madras General Sales Tax Act (1 of 1959), Secs. 41(4), 42(3).—*K. P. ABDULLA & BROS. AND ANOTHER v. THE CHECK POST OFFICER, KANDAIGOUNDANCHAVADI, COIMBATORE, AND OTHERS* [1968] 22 S.T.C. 552 (Mad.).

—See also under **EVASION OF TAX**, *K. S. PAPANNA AND ANOTHER v. DEPUTY COMMERCIAL TAX OFFICER, GUNTAKAL, AND OTHERS* [1967] 19 S.T.C. 506 (A.P.) and *KALANGI KRISHNA MURTY & Co. AND OTHERS v. COMMERCIAL TAX OFFICER, GUNTUR, AND OTHERS* [1968] 22 S.T.C. 540 (A.P.).

CHEMICAL

Sodium silicate—*Whether chemical*—*Notification No. ST-905/X dated 31-3-1956*.—Sodium silicate is included in "chemicals of all kinds" appearing as item No. 7 of the Notification No. ST-905/X dated 31st March, 1956.—*COMMISSIONER, SALES TAX, U.P. v. BANARAS CHEMICALS* [1967] 20 S.T.C. 246 (All.).

Oxygen—*Whether chemical*—*Rate of tax when sold for industrial and medicinal purposes*—*U.P. Sales Tax Act (15 of 1948)*, Secs. 3, 3-A.—The assessee manufactured oxygen gas by the industrial process known as fractional distillation of liquid air and sold the same both for industrial and medicinal purposes: *Held*, that oxygen is a chemical and it would be taxed at one anna per rupee under Notification No. ST-905/X dated 31st March, 1956, when sold for industrial purposes and at three pies per rupee under Notification No. ST-3504/X dated 10th May, 1956, when sold for medicinal purposes. *Bishambar Dayal Shri Niwas v. Commissioner of Sales Tax, Uttar Pradesh* [1963] 14 S.T.C. 184 relied on.—*INDUSTRIAL GASES LTD. v. COMMISSIONER, SALES TAX, U.P., LUCKNOW* [1968] 21 S.T.C. 124 (All.).

"Chemicals of all kinds"—*Fertilizer*—*Chilean nitrate*—*Whether fertilizer and exempt from sales tax or taxable as chemical*—*Interpretation of statutes*—*U.P. Sales Tax Act (15 of 1948)*, Secs. 3, 3-A, 4—*Notification No. S.T. 119/X-928-1948 dated 7th June, 1948*—*Notification No. S.T. 117/X-923-1948*

dated 8th June, 1948.—Notification No. S.T. 119/X-928-1948 dated 7th June, 1948, issued under section 4 of the U.P. Sales Tax Act, 1948, exempted certain goods, including fertilizers, from the provisions of section 3 of the Act. On 8th June, 1948, Notification No. S. T. 117/X-923-1948 was issued under section 3-A of the Act taxing at a single point at six pies per rupee certain goods including "chemicals of all kinds". The question was whether Chilean nitrate sold by the assessee was a fertilizer exempt from sales tax under the first notification or a chemical taxable at a single point under the second notification. There was no finding that the assessee was not selling the article as a fertilizer but was selling it only as a chemical to be used for purposes other than a fertilizer: *Held*, that Chilean nitrate sold by the assessee fell within the category of the exempted "fertilizers" and, therefore, was not included in the entry "chemicals of all kinds" in the notification dated 8th June, 1948. It is immaterial that Chilean nitrate is a chemical fertilizer and can also be used for purposes other than a fertilizer. [The court doubted the correctness of the proposition that the purpose for which an article is sold by a vendor or the use to which it is put by the purchaser determines its classification for purposes of sales tax in every case.] A prior particular law is not easily to be held to be abrogated by a posterior law, expressed in general terms and by the apparent generality of its language applicable to and covering a number of cases of which the particular law is but one. *Commissioner of Sales Tax v. Banaras Chemicals* [1967] (20 S.T.C. 246) and *Industrial Gases Ltd. v. Commissioner of Sales Tax* [1968] (21 S.T.C. 124) distinguished.—GIRJA SHANKER DUBEY *v.* COMMISSIONER OF SALES TAX [1968] 21 S.T.C. 127 (All.).

CHEMIST

Dispensing chemist—*Whether manufactures or produces goods for sale.*—Section 4, sub-section (5), clause (a), of the Bengal Finance (Sales Tax) Act (VI of 1941) applies to a dispensing chemist whose gross turnover exceeds Rs. 10,000 during the prescribed year and, therefore, such a person's business is liable for registration under section 7 of the Act. *Gentle, J.*—A chemist who dispenses prescriptions of doctors produces goods for sale within section 4(5)(a). *Das, J.*—"To manufacture or produce goods for sale" within the meaning of the Bengal Finance (Sales Tax) Act, which is concerned with "dealers", *i.e.*, persons engaged in the business of selling or supplying goods, must mean to bring into being a commercial article for sale in the business in which the dealer is

engaged, *i.e.*, an article which by itself has a commercial value and which can be the subject-matter of a sale for a price in course of the business of selling or supplying in which he is engaged.—*NORTH BENGAL STORES, LTD. v. MEMBER, BOARD OF REVENUE, BENGAL* [1946] 1 S.T.C. 157 (Cal.).

Medical practitioner owning drug-store-cum-dispensary—*Whether "dealer"*.—The applicant who was a medical practitioner and the proprietor of a drug-store-cum-dispensary claimed that he was not a dealer within the meaning of section 2(c) of the Central Provinces and Berar Sales Tax Act, 1947, acting on the instructions contained in Separate Revenue Department Memorandum No. 284-2228-VIII, dated 24th February, 1948, to the effect that medical practitioners dispensing medicines to their patients from their dispensaries were not "dealers" within the meaning of section 2(c). The applicant's concern partook of the character both of (a) a consulting room-cum-dispensary of a private medical practitioner, and (b) a drug store: *Held*, that while dealing with a concern of a composite character such as this, the general principle to be followed would be that in respect of (a) above, the applicant should not be in a position less favourable than that of a private practitioner dealing with his own patients and that in regard to (b), the applicant should, broadly speaking, be considered a dealer. Consequently (i) sales of patent medicines in packed containers whether it be to his own patients or to others must be considered as the transactions of a dealer, (ii) sales of patent medicines supplied loose—after opening containers naturally—to persons other than his patients should be regarded as the transactions of a dealer, (iii) sales of mixtures or patent medicines supplied loose according to the applicant's own prescriptions to his patients should not be regarded as the transactions of a dealer. *North Bengal Stores v. Member, Board of Revenue, Bengal* [1946] (I.L.R. (1946) 2 Cal. 425; 1 S.T.C. 157) referred to.—*J. P. DIXIT v. THE STATE* [1952] 3 S.T.C. 161.

Partner in firm selling medicines and doing consultation work in premises of firm—*Receipts from prescriptions—Whether taxable.*—While assessing the applicants, a medical firm selling medicines and composed of two partners one of whom was a medical practitioner, the question arose whether that portion of the turnover representing the receipts from the prescriptions issued by the medical practitioner who was doing consultation work in the same premises in which the applicants transacted business, was taxable under the Bombay Sales Tax Act, 1953:

Held, that what was taxable under the Bombay Sales Tax Act, 1953, was the sale of goods and not the rendering of professional services. The giving of professional advice or the giving of professional skill as a doctor could not constitute a sale of goods within the meaning of section 2(8) of the Act. If it could be shown that the receipts from the prescriptions would include an amount of consultation fees charged by the doctor that could not constitute a sale of goods; but in the absence of any material, the amount of receipts from the prescriptions could not be other than sale of goods for the purpose of section 8 of the Act.—*MESSRS PEARL & Co. v. THE STATE OF BOMBAY* [1960] 11 S.T.C. (T.D.) 48.

CHEQUE

Offences—Uncrossed cheque for tax due—Encashment by peon of officer and misappropriation—Conviction for failure to pay tax due—Not legal—Madras General Sales Tax Act, 1939, Sec. 15(b)—P.P. SIVARAMA PILLAI AND ANOTHER, *In re* [1951] 2 S.T.C. 151 (Mad.). [Since this decision the Madras General Sales Tax Rules, were amended. The rules now provide specifically that if payment is made by cheque it should be *crossed*. Rule 55 of the Madras General Sales Tax Rules, 1959, runs as follows:—“Where any payment by cheque is permitted by these rules, the cheque shall be *crossed* and made payable to the officer concerned and it shall be drawn on banks as provided for under the Madras Treasury Code.”]

CHIRA AND MURI

Exemption—“All cereals and pulses including all forms of rice”—Chira and muri—Whether cereals and exempt from taxation.—KAPILDEORAM BAIJNATH PROSAD v. J. K. DAS AND OTHERS [1954] 5 S.T.C. 365 (Assam).

CHOTANAGPORE

Applicability of Act to pending proceedings—Exemption of contracts of sale entered into before certain date—Chotanagpore—Bihar Act VI of 1949 amending proviso to section 4(1)—Notification extending Act of 1949 to Chotanagpore—Validity—Applicability of Act VI of 1949 to proceedings commenced in October, 1948.—The proviso to section 4(1) of the Bihar Sales Tax Act, 1947, provided “that the tax shall not be payable on sales involved in the execution of a contract which is shown to the satisfaction of the Commissioner to have been entered into by the dealer concerned on or before the date” notified by the Government. This was amended by Act VI of 1949 as follows:—“Provided that the tax shall not be payable on sales involved in the execution of a contract which is shown to the satisfaction of the Commissioner to have been entered into by the dealer

concerned on or before the 1st day of October, 1944.” On 22nd March, 1949, by a notification of the Governor under section 92(1) of the Government of India Act, 1935, the Amending Act of 1949 was extended to Chotanagpore. The contracts were entered into by the assessee before the notification by the Government under section 4(1) of the Act before its amendment by Act VI of 1949. The question was whether the Amending Act VI of 1949 which was extended to Chotanagpore would govern the assessment proceedings commenced against the assessee on 15th October, 1948: *Held*, that the Amending Act VI of 1949 would govern the proceedings against the assessee though they were commenced on 15th October, 1948, and after the notification by the Governor under sec. 92 (1) it was not necessary for the department to initiate against the assessee a fresh proceeding for the realisation of the sales tax and the penalty.—*THE STATE OF BIHAR v. S. S. MUKHERJEE* [1954] 5 S.T.C. 377 (Pat.).

Notification extending Act with retrospective effect—Validity of assessment.—Although the Bihar Sales Tax Act, 1947, as amended by Bihar Act VI of 1949 was made applicable to Chotanagpore only by a notification dated 22nd March, 1949, issued by the Governor of Bihar under section 92(1) of the Government of India Act, 1935, the effect of the notification was that section 16 of the Amendment Act was also made applicable to Chotanagpore and therefore the amendment made to section 4(1) was deemed to be effective in Chotanagpore with effect from the date on which the Bihar Sales Tax Act, 1947, came into force. Consequently an assessment of sales tax on an assessee residing in Chotanagpore for the period 1st July, 1947, to 31st March, 1949, was valid.—*DARSAN RAM v. THE STATE OF BIHAR* [1957] 8 S.T.C. 534 (Pat.).

CIGARS, CHEROOTS

Levy of tax on cigars, cheroots, snuff, raw tobacco etc. retrospectively and without exemption limit—Legality—Validity of provisions.—The levy of tax retrospectively on items (12) and (13) in sub-sec. (2-A) and on item (iv) in sub-sec. (2-B) of section 3 of the Madras General Sales Tax Act, 1939, as applied to Andhra (cigars, cheroots, bidis, snuff, raw tobacco etc.) with effect from the date on which the Madras General Sales Tax and the Madras Tobacco (Taxation of Sales and Registration) (Andhra Amendment) Act, 1955, came into force is not illegal. Articles 245 and 246 of the Constitution read with item 54 of List II of Schedule VII in respect of tax on sale or purchase of goods vest power in the State Legislatures to enact laws without imposing any limitation or restriction in regard to their being

enacted retroactively. The Legislatures within the spheres allocated to them are supreme, subject to the constitutional limitations. While the Courts are averse to construing a statute, particularly a taxing statute, so as to give a retrospective effect unless express words or necessary intendment compel them to do so, none the less this rule of construction cannot be confused with a constitutional limitation imposing a fetter on the power of the Legislature to enact retrospective law. The assumption that the dealer is merely the agent for collection of tax from the consumer and that tax cannot therefore be levied on him retrospectively is not correct. The liability to pay tax under the taxing section is on the dealer and it is immaterial whether he collects any tax or not from the consumer. The policy of taxation is more appropriately the province of the statesmen and of the Legislature rather than of the lawyer or the Courts. It is a public policy dependent not only upon the necessities of administration but also implementation of the schemes to serve the public needs. If in the exercise of the general policy of taxation each of the units of the federation is empowered to tax on the several items assigned to it respectively, the heaviness of the burden upon an individual, unless it exceeds the constitutional limits, cannot be questioned. *Prima facie* taxation cannot be said to be an abridgement of the fundamental rights. If, however, the pith and substance of the legislation is such that the taxes imposed are prohibitive or have the effect of imposing restrictions which are unreasonable and cannot be justified under clause (6) of Article 19, they can be successfully questioned as being unconstitutional. Although the State Legislature by the Amendment Act XVI of 1956 made the turnover of the dealers of goods specified in sub-sections (2-A) and (2-B) of section 3 liable to tax without any exemption limit and exempted dealers of goods specified in sub-section (2) as well as other goods on their turnover of less than Rs. 10,000, it was for the petitioners alleging discrimination to show that the classification was arbitrary and was unconnected with the object sought to be achieved. Having regard to the fact that in the case of taxation laws, larger discretion is given to the State in the matter of classification and sufficient latitude is permissible to the State to adjust the burden of taxation on a fair and reasonable degree of equality, it does not prevent the State from adjusting its taxation in all appropriate and reasonable ways and in the absence of necessary facts demonstrating that the classification has no rational basis to the object sought to be achieved, *viz.*, the raising of the revenue, it must be said that the retrospective

operation of the levy of tax introduced by the amendment seeks to adjust the burden with a fair and reasonable degree of equality. The burden of several kinds of taxes and levies on a particular commodity may be heavy, but that does not mean that they are subjected to double taxation. By double taxation is meant tax imposed twice over upon the same individual on one passage of money in the form of one sort of income or under the same head of tax. Where the joint operation of different statutes results in liability to two different taxes it would not amount to double taxation. Whenever any article is prepared from raw materials by giving them a form different to the raw material or changing the quality and the property, it cannot be said to remain in the same state. Some manufacturing process is involved in the production of cigars, cheroots, bidis, snuff, etc. from country tobacco and therefore there is no double taxation when tax is levied on country tobacco at the purchase point and on cigars etc. at the sale point. There are no special rules for construing a taxing statute or of applying to it too narrow or fanciful construction for holding against the State or in favour of a citizen. The ordinary rules of construction as are applicable generally in construing a statute for ascertaining the intention of the Legislature are applicable to taxing statutes also and if in so construing it, two equally apposite constructions are possible, the one in favour of the taxpayer should be adopted and in so construing the provisions, the context as well as the other provisions of the statute must be taken into consideration. The intention of the Legislature must be determined with reference to the scheme of taxation and thereafter to see whether the expression or clause which falls for particular interpretation is susceptible of the meaning consonant with it, whatever may be its meaning in another and different connotation. In other words, where the language of the particular provision being interpreted is capable of taxing intent and indicates the person to be taxed, that intent must be allowed to prevail even though the provision as such, divorced from its context, may appear to be ambiguous. The other provisions of the statute which throw light upon the intent of the Legislature and which may serve to show that the particular provision ought not to be construed as if it is construed alone and apart from the rest of the Act must of necessity be also construed. Although items (iii) and (iv) in sub-section (2-B) of section 3 do not specify the person who is to pay the tax, *i.e.*, whether the seller or the purchaser, it cannot be said that Government cannot collect tax from any person. The intention

of the Legislature as evident from the provisions of the Act was to impose the tax on the purchaser. Tax on the producer on a sale by him cannot be intended to be levied as the person who grows agricultural produce and has incidentally to sell the same cannot be called a person engaged in buying, selling or supplying or distributing goods within the meaning of the definition of dealer. On the other hand, the income from first sale of the produce from his lands would be agricultural income, as opposed to business income, liable to be taxed in exercise of the legislative power conferred by item 46 of List II of Schedule VII of the Constitution. Therefore the purchase of raw and virginia tobacco is clearly intended to be reached when the Legislature definitely indicated that it is "at the point of first purchase in the State" that the tax is exigible.—*PITHAPURAM TALUK TOBACCO, CIGARS AND SODA MERCHANTS' UNION v. THE STATE OF ANDHRA PRADESH* [1958] 9 S.T.C. 723 (A.P.).

CLOTH

Book binding cloth prepared out of medium cloth.—Whether medium cloth within the meaning of entry 11, Schedule B, Bombay Sales Tax Act, 1953.—*TRAMBAKLAL RATILAL v. THE STATE OF BOMBAY* [1956] 7 S.T.C. 258 (T.D.).

Cloth—Meaning of—Cotton cloth—Whether includes sarees and dhoties.—The expression "cotton cloth" in item 1 of sub-section (2-A) of section 3 of the Madras General Sales Tax Act, 1939, and clause (v) of section 6 of the Hyderabad General Sales Tax Act, 1950, has been used in a general sense and has to be construed broadly. It is comprehensive enough to include sarees and dhoties and there is no warrant for limiting it to fabrics sold in yards. The word "cloth" is used to denote every fabric used for any purpose including the use as a wearing apparel. A "cloth" does not cease to be "cloth" merely because it is used as a dhoti or a saree.—*THE GOVERNMENT OF ANDHRA PRADESH v. PACHIPULSU VENKATA SUBBA RAO VALLAMKONDA VENKATESWARLU AND OTHERS* [1960] 11 S.T.C. 561 (A.P.).

—**Whether includes choli bits and saris.**—Section 3(2) of the Madras General Sales Tax Act, 1939, as amended by Act III of 1956 prescribed an enhanced levy of tax on the first sale of "(i) cloth (other than cloth woven on handlooms whether of silk, artificial silk, wool, flax, or any other material) which is not made wholly of cotton". The question was whether the petitioner, who was a dealer in ready-made garments, silk choli bits and saris, was liable to tax at the enhanced rate on the first sale of silk choli bits and saris: *Held*, that silk choli bits and saris fell within the

ambit of cloth and did not fall within the exception provided in clause (i) and they were therefore subject to the additional levy prescribed under section 3(2). All cloth will be subject to the enhanced levy except (i) cloth woven on handloom whether of silk, artificial silk, wool, flax or any other material and (ii) cloth which is wholly of cotton. Though the words "which is not made wholly of cotton" are placed outside the brackets they are intended to operate as exception from the category of cloth so as not to attract the enhanced levy. Choli bits and saris are cloth and not clothes. Choli bits are mere pieces or lengths of cloth in a state of adaptability to be transformed into garments like bodices but by themselves they are neither wearing apparel nor garments. Saris also are pieces of cloth and can hardly be called garments merely because they are draped round the body of a woman. They are not articles of dress like gowns, frocks, and other tailored articles used by women mostly in countries other than India. The term "cloth" in accordance with its dictionary meaning and in its ordinary popular meaning has to be understood as any woven fabric or stuff till it is transformed into an article like dress, garment or bed cover etc. which comes into ready use as such articles. After such transformation the article can no longer retain its previous state of cloth though it is made of cloth. Any workmanship or embroidery made upon a length of cloth should not, by reason of some labour or money being spent over the cloth, deprive the cloth of its true and existing character. *Government of Andhra Pradesh v. Pachipulsi Venkata Subba Rao Vallamkonda Venkateswarlu and Others* [1960] 11 S.T.C. 561 and *Rai Saheb Chedra Durvasulu v. Sales Tax Officer, Seventh Circle, Secunderabad, and Others* [1961] 12 S.T.C. 158 relied on.—*SRI KITTAPPA DRESS MANUFACTURING AND EMBROIDERY WORKS v. THE STATE OF MADRAS* [1962] 13 S.T.C. 31 (Mad.).

—**"Cloth" meaning of—Difference between "clothes" and "cloth".**—The essential difference between "cloth" and "clothes" is that whereas cloth is what comes straight from the weaving or textile factory, "clothes" are articles after "cloth" has been converted by cutting and stitching and something having been done to "cloth" either by human or machine agency to make that "cloth" into a garment or wearing apparel. Neither the size in which a particular cloth is manufactured, nor its adaptability for a particular use, nor the fact that it can straightaway be used as a garment can make cloth manufactured by a mill cease to be "cloth". Where after cloth has been manufactured, something more is done to it by some other agency, which makes it into a different

kind of product or makes it adaptable for a particular kind of use, it ceases to be "cloth" *simpliciter* and will have to be described by a different name. The assessee, dealing in *dhotis*, *saris*, *chadars*, towels, canvas, rags and fents contended that what was taxable under entry 2 of List I of the Notification No. S.T. 117/X-923-1948 dated 8th June, 1948, issued under section 3A of the U.P. Sales Tax Act, 1948, was "cloth manufactured by mills" and that the articles sold by it did not fall under that description and were not therefore taxable at six pies per rupee but were merely general articles taxable at three pies per rupee under section 3: *Held*, that the articles sold by the assessee came under the description of "cloth manufactured by the mills" and were therefore taxable at six pies per rupee. *Firm Jaswant Rai Jai Narain v. Sales Tax Officer and Others* [1955] (6 S.T.C. 386) distinguished.—*LAKSHMIRATAN COTTON MILLS CO., LTD. v. SALES TAX OFFICER, SECTOR II, KANPUR* [1962] 13 S.T.C. 1031 (All.).

—*Hessian—Whether "cloth"*.—The word "cloth" as used in entry 1 of Schedule I to the Bombay Sales Tax Laws (Special Exemptions) Act, 1957, would cover hessian, *i.e.*, cloth manufactured from fibres of hemp or jute. Therefore the sale of hessian is not taxable under the Bombay Sales Tax Act, 1953.—*COMMISSIONER OF SALES TAX, GUJARAT v. SUMATILAL POPATLAL & Co.* [1964] 15 S.T.C. 498 (Guj.).

—*Cut pieces from takas of malmal and voil cloth sold as sarees and ladies' underwear after doing embroidery work on those pieces—Whether cotton fabrics, embroidered sarees or ready-made garments.*—The assessee purchased *takas* of malmal and voil cloth and after cutting out five yards pieces and three yards pieces from them, superimposed embroidery work on those pieces and sold the five yards pieces as sarees and three yards pieces as ladies' underwear: *Held*, (i) that the saree pieces fell under entry 3(1) of Schedule E of the Bombay Sales Tax Act, 1959, and not under entry 15 of Schedule A or entry 4 of Schedule D; (ii) that the embroidered three yards pieces intended for ladies' underwear would not fall under entry 15 of Schedule A or entry 4 of Schedule D but would fall under entry 22 of Schedule E. Where a statute contains both a general provision as well as a specific provision, the latter must prevail. Further, where there are two provisions apparently in conflict with one another, the attempt while construing them must be to bring about harmony between the two and not to treat them as repugnant to each other. Entry 15 in Schedule A exempting cotton fabrics of all varieties is a general entry, while entry 3 in Schedule E is a specific entry, dealing only with specific kinds of

goods. If a saree piece, which is a cotton fabric, is subjected to the process of embroidery after its manufacture as a cotton fabric has been completed, it can no longer be called a cotton fabric as defined by entry 19 of Schedule I to the Central Excises and Salt Act, 1944, and it becomes an embroidered saree within the meaning of entry 3 of Schedule E. The process of embroidery is not a process incidental or ancillary to its manufacture as defined in section 2(f) of the Central Excises and Salt Act. The three yards piece is not a ready-made garment for, in order to make it into a ladies' underwear, it has to be stitched. Because of the embroidery work having been subsequently superimposed on the cloth and it being not an incidental or ancillary process to its manufacture, the three yards piece also is not a cotton fabric.—*PRAVIN BROS. v. THE STATE OF GUJARAT* [1964] 15 S.T.C. 478 (Guj.).

—*Shetranjis (cotton carpets manufactured on handloom)—Whether handloom cloth.*—Sales of *shetranjis* woven on handloom out of cotton yarn are not covered by entry 29 of Schedule A to the Bombay Sales Tax Act, 1959. The Legislature intended to give to the expression "handloom cloth of all varieties" that meaning as understood in ordinary parlance that is as understood commonly by those conversant with and dealing in such cloth and not the general or technical connotation of the word "cloth" as given in the various dictionaries. Therefore *shetranjis*, *i.e.*, cotton carpets manufactured on handloom would not be included in the expression "handloom cloth of all varieties". *Ramavatar Budhai Prasad v. The Assistant Sales Tax Officer, Akola, and Another* [1961] (12 S.T.C. 286) and *Kosuri Subba Raju v. The State of Andhra* [1956] (7 S.T.C. 479) relied on.—*VRAJLAL BHUKHANDAS v. THE STATE OF GUJARAT* [1964] 15 S.T.C. 437 (Guj.).

—*Handloom cloth—Borders woven on handloom out of pure silk, art silk and jari thread—Whether handloom cloth—Interpretation of entries in Schedule—Bombay Sales Tax Act (51 of 1959), Sec. 5, Sch. A, Entry 29.*—Borders containing more than 60 per cent. of pure silk and woven on handloom out of silk, art silk and jari threads are not handloom cloth within the meaning of entry 29 in Schedule A to the Bombay Sales Tax Act, 1959. The word "cloth" in entry 29 of Schedule A must be interpreted according to its secondary or popular sense—the sense in which they are commonly understood in ordinary parlance—and not in its primary or technical sense. In ordinary parlance borders cannot be regarded as cloth. The words "of all varieties" in the entry do not control or affect the true connotation of what is handloom cloth within the meaning of that entry.

The Legislature used the words "of all varieties" for the purpose of bringing within the ambit of the exemption all varieties of handloom cloth provided they satisfied the basic requirement that they were handloom cloth.—*THE STATE OF GUJARAT v. UMEDRAM LALLUBHAI* [1965] 16 S.T.C. 1059 (Guj.).

—Additional duty on cloth—Madras Act XLI of 1954 imposing additional tax on cloth, repealed by Act II of 1958—Whether liability under repealed statute limited to cases where assessment is made before repeal.—*A. P. MARIAPPA MUDALIAR v. THE STATE OF MADRAS* [1962] 13 S.T.C. 746 (Mad.).

—Levy and collection—Additional levy on cloth under section 3(2), Madras General Sales Tax Act, 1939—Government order waiving collection of tax if dealer has not collected it from customers—Effect of order—Amount representing additional levy collected from customers and kept as "contingent liability" in accounts—Whether tax has been collected—Right to compound under clause 3, Madras General Sales Tax (Emergency Provisions) Ordinance, 1957—Necessity to file application in time.—*A. S. KASSAM & Co., MADURAI v. THE STATE OF MADRAS* [1962] 13 S.T.C. 907 (Mad.).

—Additional duties of excise—Stock of grey or unfinished cloth on appointed day and not become liable to additional excise duty sold after process of bleaching, dyeing and printing—Liability to sales tax—Scope of section 4(1) and (2), Bombay Sales Tax Laws (Special Exemptions) Act, 1957—Whether processed cloth a different commercial commodity—*Bombay Sales Tax Act (3 of 1953)*—Additional Duties of Excise (Goods of Special Importance) Act, 1957.—Sales and purchases which were taken out by section 4(2) of the Bombay Sales Tax Laws (Special Exemptions) Act, 1957, from the scope and ambit of the exemption contained in section 4(1) of that Act were sales and purchases of scheduled goods held by a registered dealer on the appointed day and remaining unsold with him on the day immediately preceding the appointed day provided they had not become liable to payment of additional duties of excise under the Additional Duties of Excise (Goods of Special Importance) Act, 1957. If such scheduled goods in stock with a registered dealer on the appointed day were not sold on or after the appointed day but were converted into different commercial articles by a process of manufacture and such different commercial articles were sold, section 4(2) could not apply. The assessee carrying on the business as manufacturer of

cloth held a stock of grey or unfinished cloth on the appointed day which did not become liable to the payment of additional duty of excise under the Additional Duties of Excise (Goods of Special Importance) Act, 1957, or under any other Central law made after 1st November, 1957. After the appointed day the assessee subjected this cloth to the process of bleaching, dyeing and printing and produced out of it finished cloth which was then sold. It was conceded on behalf of the revenue that unless these sales could be brought within section 4(2) of the Bombay Sales Tax Laws (Special Exemptions) Act, 1957, no sales tax would be chargeable on these sales: *Held*, (1) that when the process of bleaching, dyeing and printing was performed on grey cloth, what was produced was a new commercial commodity even though the basic or essential properties were not in any way transformed, and finished cloth remained as much cloth as grey cloth. In such a case finished cloth was manufactured or produced out of grey cloth and finished cloth could not be said to be the same goods as grey cloth; (2) that when the stock of grey or unfinished cloth held by the assessee on the appointed day was converted into finished cloth by bleaching, dyeing and printing and the finished cloth so produced by the assessee was sold on and after the appointed day, there was no sale of the stock of scheduled goods held by the assessee on the appointed day and remaining unsold on the day immediately preceding the appointed day within the meaning of section 4(2) and the sales of finished cloth effected by the assessee were not covered by section 4(2).—*AHMEDABAD SILK FACTORY PRIVATE LTD. v. COMMISSIONER OF SALES TAX, GUJARAT STATE, AHMEDABAD* [1966] 18 S.T.C. 23 (Guj.).

Cottage industry—Power-loom cloth and hand-loom cloth subjected to silk and jari embroidery—Whether can be regarded as product of cottage industry.—*KISANLAL RADHAKISAN v. THE STATE* [1952] 3 S.T.C. 336.

Dealer—Scheme of distribution of cotton piece-goods—Distributing retail consignee—Whether dealer.—See *P. VAIDYANATHA IYER v. THE STATE OF MADRAS* [1957] 8 S.T.C. 268 (Mad.) and *K. K. VENKATACHALAM CHETTIAR COMPANY v. THE STATE OF MADRAS* [1957] 8 S.T.C. 271 (Mad.).

—Resident dealer importing cloth from non-resident dealer—Goods sent by rail—Railway receipts sent through bank or indenting agents—Dealer making payment to bank and taking delivery of railway receipts—Subsequent sales

effected by resident dealer—Whether first sales.—See *S. V. NANNUSWAMI v. STATE OF MADRAS* [1960] 11 S.T.C. 726 (Mad.).

—Textile mill bleaching and dyeing goods brought by other mills—Articles used in bleaching and dyeing—Whether used in manufacture.—See *PUNJAB WOOLLEN TEXTILE MILLS v. ASSESSING AUTHORITY, SALES TAX, AMRITSAR* [1960] 11 S.T.C. 486 (Punj.).

—Tax on single point payable by manufacturer—Manufacturing company transferring goods to its depots at one price and depots selling goods to consumers at higher price—Whether company liable to pay tax on turnover of depots—U. P. Sales Tax Act (XV of 1948), Sec. 3A.—*VIKRAM COTTON MILLS, LUCKNOW v. COMMISSIONER OF SALES TAX, U.P.* [1960] 11 S.T.C. 120 (All.).

Essential goods—Coarse and medium cotton cloth—Declaration as essential commodity by Essential Supplies (Temporary Powers) Act, 1946—Whether declaration for purposes of Article 286(3)—Imposition of sales tax on such cloth—Legality—Scope of Article 286(3), section 3 of Act LII of 1952 and Explanation 2 to section 2(k) of Hyderabad Act—Whether Article 286(3) affects laws passed by State Legislatures before enactment of Act LII of 1952—Hyderabad General Sales Tax Act (XIV of 1950), Sec. 2(k), Explanation 2—Constitution of India, Article 286(3)—Essential Supplies (Temporary Powers) Act (XXIV of 1946)—Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act (LII of 1952).—*FIRM OF A. GOWRI-SHANKAR v. SALES TAX OFFICER, SECUNDERABAD, AND ANOTHER* [1958] 9 S.T.C. 407 (S.C.).

Exemption—Ready-made garments made out of exempted cloth—Whether entitled to exemption.—See *SHARFAJI RAO v. COMMISSIONER OF SALES TAX* [1953] 4 S.T.C. 6 (Hyd.).

—Ready-made garments—Whether entitled to exemption.—*M. A. RAHIM v. DEPUTY COMMERCIAL TAX OFFICER* [1960] 11 S.T.C. 355 (A.P.).

—Hand-loom-woven cloth when subjected to needle work by hand or machine—Whether hand-loom-woven cloth.—See *ISHWARDAS KAPOOR & SONS v. MEMBER, BOARD OF REVENUE, BENGAL* [1946] 1 S.T.C. 153 (Cal.).

—Handloom cloth—Sales falling under section 8(2), Central Sales Tax Act, 1956—Whether entitled to exemption granted to handloom cloth by notification under sec. 9(1), Andhra Pradesh General Sales Tax Act, 1957.—See *SURYA TRADING FIRM AND OTHERS v. THE STATE OF ANDHRA PRADESH* [1963] 14 S.T.C. 720 (A.P.).

—Exemption of hand-woven and hand-spun cotton cloths from mill-made yarn—Interpretation of item 16 in Schedule III of Assam Sales Tax Act, 1947.—See *RAM NARAYAN NANDALAL v. THE STATE OF ASSAM* [1953] 4 S.T.C. 195 (Assam).

—Notification exempting sale of cloth manufactured on hand-loom with artificial silk, linen, flax and cotton or wool—Garments made from hand-loom cloth—Whether exempted.—See *FIRM JASWANTI RAI JAI NARAIN v. SALES TAX OFFICER AND OTHERS* [1955] 6 S.T.C. 386 (All.).

—Notification exempting sale of cloth manufactured in U.P. with a view to export such cloth—Meaning of “such cloth”—Export of such cloth after dyeing and printing—Right to exemption.—*KAILASH NATH AND ANOTHER v. STATE OF U.P. AND OTHERS* [1957] 8 S.T.C. 358 (S.C.).

—Nawar tape woven on hand-loom—Whether cloth woven on hand-loom—Whether entitled to exemption.—*KOSURI SUBBA RAJU v. THE STATE OF ANDHRA* [1956] 7 S.T.C. 479 (Andh.).

—Hosiery goods—Whether garments and exempt from sales tax.—*PAREEK HOSIERY PRODUCTS v. DEPUTY COMMISSIONER OF SALES TAX* [1962] 13 S.T.C. 722 (Raj.).

—Hosiery products—Meaning of—Whether include “banians” and “chaddies”.—*JAIPUR HOSIERY MILLS PRIVATE LTD. AND OTHERS v. STATE OF RAJASTHAN AND OTHERS* [1967] 19 S.T.C. 416 (Raj.).

—Handloom cloth—Durries—Whether entitled to exemption.—*INDER SINGH v. SALES TAX OFFICER* [1961] 12 S.T.C. 557 (Raj.).

—Handloom cloth—Meaning of—Whether includes cotton lungies, roomals and sarees.—*RAI SAHEB CHEDRA DURVASULU v. SALES TAX OFFICER* [1961] 12 S.T.C. 158 (A.P.).

—Exemption of cloth if price does not exceed Rs. 10 per piece—Cloth cut from bigger piece costing more than Rs. 10—Whether entitled to exemption.—*COMMISSIONER OF SALES TAX v. KALURAM NARASINGH DAS* [1961] 12 S.T.C. 391 (Ori.).

—P. V. C. rexine cloth—Whether leather cloth—Whether taxable or exempt under Notification No. 2765-2264-VST dated 12th December, 1960—Madhya Pradesh General Sales Tax Act, 1958, Sch. I, Item 6; Sch. II, Item 38; Sch. II, Part VI, Item 1.—*S. R. CALCUTTAWALA, SIYAGUNJ, INDORE v. COMMISSIONER OF SALES TAX, MADHYA PRADESH* [1967] 19 S.T.C. 230 (M.P.).

—“Braided cords”—Whether textiles and entitled to exemption under entry 4, Schedule III,

Madras General Sales Tax Act (1 of 1959).—THE STATE OF MADRAS *v.* T. T. GOPALIER AND ANOTHER [1968] 21 S.T.C. 451 (Mad.).

—Braided cords—Whether cotton fabrics—Whether inter-State sales of braided cords exempt from sales tax.—THE GOVERNMENT OF MADRAS *v.* MADURAI BRAIDED CORD AND TAPE PRODUCERS CO-OPERATIVE INDUSTRIAL SOCIETY [1968] 22 S.T.C. 470 (Mad.).

—Terylene, Terene, Dacron, Nylon, Nylex etc.—Whether artificial silk and exempt from sales tax.—KISHINCHAND CHELLARAM AND OTHERS *v.* JOINT COMMERCIAL TAX OFFICER, CHINTADRI PET DIVISION, MADRAS-2, AND OTHERS [1968] 21 S.T.C. 367 (Mad.).

“Machine cloth” or “silk bolting cloth”—Whether included in expression *textile fabrics of any kind*.—The connotation of the expression “textile fabrics of any kind” in entry 79 of Schedule B of the Bombay Sales Tax Act, 1953, cannot be curtailed or restricted because of the inclusive part in the said entry. Therefore “machine cloth” or “silk bolting cloth” constituted textile fabrics within the meaning of that entry.—A-1 ENGINEERING CO. *v.* STATE OF MAHARASHTRA [1964] 15 S.T.C. 15 (Mah.).

Mill cloth—Whether includes power-loom cloth.—A power-loom is not mill and power-loom cloth is never associated with mill cloth. Therefore when section 2(b) of the Madras General Sales Tax (Second Amendment) Act, 1954, enacted that mill cloth would be liable to additional tax, it did not include power-loom cloth.—SRI DHANDAPANI POWER-LOOM FACTORY, ERODE *v.* COMMERCIAL TAX OFFICER, COIMBATORE, AND ANOTHER [1961] 12 S.T.C. 304 (Mad.).

Palavs attached to saris—Whether borders, laces or trimmings.—Palavs woven on handlooms out of cotton and silk yarn and *jari* thread and generally attached to sari pieces for decorating saris fall under entry 47(i) of Schedule B to the Bombay Sales Tax Act, 1953. *Palav* is understood by all who are conversant with such articles as a trimming, if not as a border or a lace to a sari piece.—CHUNILAL HARAKCHAND *v.* THE STATE OF GUJARAT [1966] 17 S.T.C. 123 (Guj.).

Ready-made garments—Application of definition of “works contracts” in Mysore Sales Tax Act, 1948, to ready-made garments.—COMMISSIONER OF SALES TAX, BANGALORE, *In re* [1959] 10 S.T.C. 29 (Mys.).

Ready-made garments—Whether textiles manufactured by mills.—What is meant by “textiles manufactured by mills” in section 3 of the Mysore Sales Tax Act, 1948, is really textiles

simpliciter and not textiles upon which work has been done making it ready-made garments. It cannot be said that ready-made garments, although made out of textiles manufactured by mills, are still textiles manufactured by mills. The restriction upon taxation in respect of “textiles manufactured by mills” applies to those textiles *simpliciter*. It is therefore lawful to levy sales tax under the Act on the turnover of a dealer selling ready-made garments.—COMMISSIONER OF SALES TAX, BANGALORE, *In re* [1959] 10 S.T.C. 29 (Mys.).

Textiles—Cloth manufactured in powerlooms—Whether mill-made textile—General Sales Tax Act, 1125 (Kerala), Sec. 5A(1) (i).—Cloth manufactured in powerlooms which are housed in a factory are “mill-made textile” within the meaning of section 5A(1)(i) of the General Sales Tax Act, 1125. *Sri Dhandapani Powerloom Factory, Erode v. Commercial Tax Officer, Coimbatore, and Another* [1961] (12 S.T.C. 304) dissented from.—LAKSHMI POWER-LOOM INDUSTRIAL CO-OPERATIVE SOCIETY LTD. *v.* STATE OF KERALA [1965] 16 S.T.C. 864 (Ker.).

Validity of notification—Cotton yarn and cotton cloth—Prescription of single point by notification instead of by rules—Whether U.P. Sales Tax (Amendment) Act (40 of 1952) has validated Notification No. S.T. 117/X-923-1948 dated 8th June, 1948—Whether Amendment Act contravenes Articles 286(3), Constitution.—RAM CHAND TEXTILES *v.* SALES TAX OFFICER, HATHRAS [1964] 15 S.T.C. 340 (All.).

CLUB

Cosmopolitan Club, Madras—Legality of levy of sales tax on supply of refreshments to members.

—A purely members’ club which makes purchases through a secretary or manager and supplies requirements to members at a fixed rate does not in law sell these goods to members but merely distributes them, all the essential elements of a sale in the transaction being wanting. Under sec. 3(a) of the Madras General Sales Tax Act, 1939, subject to the provisions of the Act, every dealer had to pay for each year a tax on his total turnover for such year. Section 2(b) defined a “dealer” as “any person who carries on the business of buying or selling goods.” The Explanation to this clause provided that “a co-operative society, a club, a firm or any association, which sells goods to its members is a dealer within the meaning of this clause.” Section 2(h) defined “sale” as follows:—“Sale with all its grammatical variations and cognate expressions means every transfer of property in goods by one person to another in the course of trade or business for cash

or for deferred payment or other valuable consideration." The petitioner, the Cosmopolitan Club, Madras, was a social or members' club not conducted for gain or profit and it was registered under section 26 of the Indian Companies Act, 1913. Each member of the club contributed funds by means of entrance fees, or monthly or annual subscriptions and other charges out of which the club expenses were met. The club purchased for the consumption of its members commodities on which sales tax was paid and some of these commodities were converted and cooked into edible food and supplied to members when required. When a member was supplied with the refreshments and drinks he was charged on his bill at a fixed rate determined by the cost thereof including sales tax already paid, cost of establishments and so on. The club, which had been paying sales tax on the supply of refreshments to its members since 1939 applied to the Government in 1949 to grant exemption from the levy of sales tax on the ground that the refreshments were supplied to members without any profit motive but the Government declined to grant the exemption. The petitioner filed two petitions under Article 226 for the issue of (1) a writ or *certiorari* or other appropriate writ to quash the Government order declining to grant exemption, and (2) a writ by way of *mandamus* to direct the authorities from levying such sales tax in future: *Held*, (1) that the failure of the petitioner to object to the levy of the tax since 1939 and to explore the long and tedious avenue of appeal and revision provided by the Act was not an impediment in the way of issuing a writ, if it was found that the sales tax levy was really illegal; (2) that in the present case the remedy by way of writ under Article 226 was not only open to the petitioner but was also the appropriate and correct one; (3) that in the particular circumstances of this case the petitions should not be rejected on the ground that notice of the alleged illegality or wrong on which the petitions were founded, was not served on the Government before the filing of the suit; (4) that the levy of sales tax on the supply of refreshments by the petitioner to its members was illegal inasmuch as when refreshments were supplied there was no transfer of property in the goods from the petitioner as such to its members and the petitioner did not do any trade or business in purchasing from outside, the requirements of members and supplying them to its members at a fixed charge. [A writ of *mandamus* directing the Government to forbear, in future, from levying and collecting sales tax on the value of the refreshments supplied to the members by the petitioner was issued. The petition for the issue of writ of *certiorari* to quash the

Government order declining to grant exemption was not pressed and was accordingly dismissed.]—THE COSMOPOLITAN CLUB, MADRAS *v.* THE DEPUTY COMMERCIAL TAX OFFICER AND ANOTHER [1952] 3 S.T.C. 77 (Mad.). [On Letters Patent Appeal this decision was affirmed.—See next para.]

—To constitute a sale with the meaning of the Madras General Sales Tax Act, 1939, at least three ingredients are required :—(i) There must be a transfer of property in goods. (ii) The transfer must be in the course of trade or business. (iii) And it must be for valuable consideration. In the absence of any one of these ingredients, the transaction will not be a sale within the meaning of the Act. The expression "in the course of trade or business" which is incorporated in the definition of "sale" makes it plain that the transaction must be commercial in its nature, that is to say, the transaction must have its inception in a hope of profit, *i.e.*, with a profit motive. It is not necessary that any profit should actually be realised and the transaction may well end in a loss. None the less the transaction would be a sale provided it was put through as a part of or in pursuance of an enterprise which was set on foot in the hope of gain. The entire connotation of the word "sale" is carried into the definition of "dealer" in the Act. In the absence of profit motive the supply of refreshments by a club to its members would not be a sale as that word is defined in the Act. The function of the explanation to the definition of "dealer" in section 2(b) is not to effect a fundamental change in the character of the transaction which would be the subject of tax. Firstly, the explanation itself uses the expression "sells" which has a statutory definition. Secondly, it is possible to read the explanation as applying to institutions of the type set out therein, which have a profit motive. For, in the case of a proprietary club, as distinguished from a members' club, it is possible that the proprietor seeks to make a profit by affording social amenities to those resorting to the club. Possibly the explanation was added merely to include occasional or even casual transactions by the institutions and persons set out therein and to repel in advance any argument that unless there is a continuous series of sales the association dealt with in the explanation would not be liable to pay tax. The explanation however is not sufficient or apt to impose tax liability on transactions of sale unattended with profit motive. *Quaere*.—Whether the supply of refreshments by a non-proprietary incorporated club to its members amounts to a sale or not. Where there is an alternative remedy and that remedy is adequate, the High Court will ordinarily be very reluctant to interfere by the issue of a writ under

Article 226 of the Constitution. The existence of such a remedy does not, however, deprive the Court of its jurisdiction to act, but it would be a strong dissuading factor. Nevertheless if after taking into account all the relevant circumstances the Court reaches the conclusion that the case is an appropriate one in which the writ should go it has got authority to issue the writ. The existence of an alternative remedy would not, where the prayer is for the issue of a writ of prohibition, be as strongly dissuasive as where the prayer is for the issue of a writ of *certiorari* since it avoids expense and waste of time. Where a single Judge of the High Court has issued a writ, in exercise of his discretion under Article 226, the High Court will not, in an appeal from that decision, interfere with that decision unless it is satisfied that the exercise of the discretion is clearly erroneous or improper. Decision of Mack, J., in *Cosmopolitan Club, Madras v. The Deputy Commercial Tax Officer and Another* [1952] (3 S.T.C. 77) affirmed.—DEPUTY COMMERCIAL TAX OFFICER, TRIPPLICANE DIVISION, AND ANOTHER *v.* THE COSMOPOLITAN CLUB [1955] 6 S.T.C. 1 (Mad.).

Liability to sales tax on supply of refreshments to members.—The supply to the members of a members' club, registered under section 26 of the Companies Act, of refreshments purchased out of club funds which are composed of members' subscriptions, is not a transfer of property from the club as such to a member and the club is therefore not liable to sales tax under the Central Provinces and Berar Sales Tax Act, 1947, in respect of such supplies of refreshments. The club is, however, bound to satisfy the taxing authorities that it is not carrying on a business of selling or supplying goods to non-members and therefore it is bound to produce under section 15 accounts, registers or documents, if required by the Commissioner, in order to enable the authorities to arrive at the conclusion, whether it should be registered as a "dealer" or not. Under the Central Provinces and Berar Sales Tax Act, 1947, sales tax can be levied only on the gross turnover on sales and therefore if a transaction does not constitute "sale", there can be no valid imposition of sales tax. The word "supply" used in section 2(c) should not be interpreted in its literal absolute sense, but must be given a limited and qualified sense. Though the two concepts of "sale" and "supply" are distinct and the Legislature knew the distinction, yet when it used the expression "business of supplying goods" in section 2(c) it meant that property in goods will be transferred to those to whom the goods are supplied in the same way as in a transaction of sale, that is, in a transaction

akin to sale and as a business deal. In a non-proprietary members' club the element of "profit" in the price charged to the member does not make any difference. The excess paid by the member does not entirely cease to be his property. He has a share in it just as he has a share in the stocks carried by the club. The same is, however, not true if goods are sold or supplied to non-members. The profit thus made is on a different footing and the club can be said to run a business. In such an event the club as an entity is viewed *vis-a-vis* persons not belonging to the club. But where the club supplies goods to its own members an excess charged to build up a fund to provide other amenities does not make the transaction a business one, nor the supply a sale. In such a case the payment is a voluntary contribution to the funds of the club to enable it to cater for other needs and amenities. This will be so if the goods are supplied to the members *bona fide* by the club, even if some of the goods are ultimately consumed by non-members. The conduct of the member cannot make any difference if the conduct of the club is *bona fide* and honest. Even accepting the view that an incorporated society is a legal entity, as distinct from the members composing it, such a society can act as the agent or trustee of the members. If the agent or the trustee supplies goods to the members and charges commission or agency brokerage, even then, ordinarily, the supply of goods would not amount to a transaction of sale and the transfer of property from the incorporated club to its members will not amount to a sale within the definition of the Act or even of the Sale of Goods Act.—BENGAL NAGPUR COTTON MILLS CLUB, RAJNANDGAON *v.* SALES TAX OFFICER, RAIPUR, AND ANOTHER [1957] 8 S.T.C. 781 (M.P.).

—Under the Hyderabad General Sales Tax Act, 1950, it is not every sale that can be the subject-matter of the levy of tax. To constitute a sale within the meaning of the Act the necessary ingredients are: (1) There must be transfer of property in goods; (2) the transfer must be *in the course of trade or business*; and (3) it must be for valuable consideration. The important requirement is that the sale must be in the course of trade or business and the expression "in the course of trade or business" makes it clear that the transaction must be commercial in its nature. In other words, it must be a business carried on for some pecuniary gain. The definition of dealer also underlines the fact that the transaction must be of a commercial nature. Consequently the supply of refreshments, drinks, etc., to its members by the Secunderabad Club,

which was a social and recreational association of members not conducted for profit or gain, could not be regarded as a "sale" by a "dealer" within the meaning of the Act and could not therefore be assessed to sales tax. The fact that the club made a profit in any particular year did not make any difference. The real criterion was whether it was doing business with a view to make a profit. Profit might be incidental but the club was not doing business with a view to make a profit. *Deputy Commercial Tax Officer, Triplicane Division, and Another v. The Cosmopolitan Club* [1955] (6 S.T.C. 1; A.I.R. 1954 Mad. 1144) applied.—*THE SECUNDERABAD CLUB v. COMMISSIONER OF SALES TAX, HYDERABAD STATE* [1957] 8 S.T.C. 850 (A.P.).

—In order that a person may be a "dealer" under the C. P. and Berar Sales Tax Act, 1947, he must carry on the business of selling or supplying goods. The words "selling or supplying goods" in the latter part of the definition of "dealer", which speaks of a society, club or association, must also be construed to mean selling or supplying goods in the course of business. Therefore, in the case of a members' club unless the selling or supplying of goods by the club to its members is done as a business, that is, with a profit-making motive, the club cannot be a dealer under the Act.—*GONDWANA CLUB, NAGPUR v. SALES TAX OFFICER, NO. II, NAGPUR* [1958] 9 S.T.C. 450 (Bom.).

—See also another decision relating to the same club (unreported) which is referred to in *THE MAHABALESHWAR CLUB v. THE STATE OF MAHARASHTRA* [1968] 22 S.T.C. 123 at page 130 (Bom.).

—*Members' club—Levy of sales tax on supply of refreshments by club to its members.*—The expression "sale of goods" occurring in entry 54 of List II of Schedule VII of the Constitution is a composite expression having a definite meaning involving the existence of all the elements required to constitute a valid sale and there can be no sale of goods unless all the component elements are present. It will not be open to the Legislature to make a transaction which is not a sale, a sale by a statutory fiction and impose a tax thereon. If therefore the element of transfer of property is lacking in any transaction, there can be no sale and the Legislature cannot by treating it as a sale by a deeming clause proceed to bring it within the ambit of the taxing statute. The Explanations to sections 2(g) and 2(n) of the Madras General Sales Tax Act, 1959, are *ultra vires* of the State Legislature for the reason that they enable the State Legislature to tax transactions which are

not really sales and, therefore, fall outside the ambit of its legislative power under the Constitution. The Explanations create a fiction by which the concept of the word "sale" is extended so as to include a transaction which properly speaking would not amount to sale. A members' club holds a recognised position under the law. Whether such a club is incorporated or unincorporated, it exists and performs duties only for the benefit of the members. Its activity in regard to that matter may be an organised one, but all of them will be for the benefit of the members. In the case of an unincorporated club the supply of articles and refreshments by the club to one of its members is not a sale but a release by all the members in favour of a joint owner who takes the goods. In the case of an incorporated club, which exists only for the purpose of providing amenities to its members, so long as no outsider has an interest in it, there is an identity of interest between the club and the members. In such a case the supply of articles by it to a member will tantamount to delivery by an agent or trustee to the principal or beneficiary and there can be no transfer of ownership by a person absolutely entitled to the property to the one who acquires title to the property on such transfer. In regard to the supply and distribution of refreshments by the Cosmopolitan Club, Madras (a company registered under section 26 of the Indian Companies Act, 1913) to its members against payment it cannot be said that there has been a transfer of property by the Club as an absolute owner to its members as purchasers. Therefore the Club cannot be regarded as a "dealer" and the supply of refreshments to its members cannot be regarded as a "sale" within the meaning of the Madras General Sales Tax Act, 1959. The case is more analogous to that of an agent or mandatory investing his own moneys for preparing things for consumption of the principal, and later recouping himself for the expenses incurred. The circumstance that a small margin of profit results occasionally in such a transaction can only be regarded as incidental to the transaction, as it is not always possible to fix the price of refreshments with exactitude, and that cannot convert the transaction into one of sale. The Young Men's Indian Association, a society registered under the Societies Registration Act (XXI of 1860), is not a "dealer" and the supply and distribution of refreshments by the Association to its members is not a "sale" within the meaning of the Act. A club, whether incorporated or not, will be a dealer only by virtue of the Explanation to section 2(g) and not otherwise. It is therefore not necessary that its

transactions with its members should be commercial in their nature so as to attract the tax liability. Neither section 2(g) nor section 2(n) of the Act can be challenged as contravening Article 14 of the Constitution. Co-operative societies, clubs, firms and associations form a distinct and intelligible class from those specified in the main part of section 2(g) and the classification is intelligible and even reasonable. The Explanations to sections 2(g) and 2(n) contemplate an organised activity on the part of the club in the purveying of articles to its members, and the activity of persons or institutions referred to therein is more comparable to that of traders than otherwise. There is therefore no difference in treatment between the category of persons coming under the main part of section 2(g) and the Explanation thereto. Ordinarily speaking there can be no limit to the creation of a fiction in a statute by a Sovereign Parliament. But where the legislative authority is limited or circumscribed by the Constitution, a fiction which has the effect of extending the scope of an enactment so as to transgress the constitutional limits must be invalid, for no Legislature can do that by enacting a fiction which it cannot do directly: *Held*, that, in the circumstances of the case, there were sufficient grounds for the exercise of the jurisdiction under Article 226, notwithstanding the existence of an alternative remedy under the Madras General Sales Tax Act, 1959.—**YOUNG MEN'S INDIAN ASSOCIATION (REGD.), MADRAS, AND ANOTHER v. JOINT COMMERCIAL TAX OFFICER, HARBOUR DIVISION II, MADRAS, AND ANOTHER** [1963] 14 S.T.C. 1030 (Mad.).

Distribution of goods by club to its members—Whether constitutes sale—General Sales Tax Act, 1125 (Kerala), Sec. 2(d), Explanation.—The transfer or distribution of goods effected by a club to its members does not constitute a sale under the General Sales Tax Act, 1125. *Young Men's Indian Association (Regd.), Madras, and Another v. Joint Commercial Tax Officer, Harbour Division II, Madras, and Another* [1963] (14 S.T.C. 1030) relied on.—**DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX, QUILON v. SECRETARY, QUILON CLUB** [1965] 16 S.T.C. 862 (Ker.).

Members' club—Levy of sales tax on supplies of refreshments by club to its members—Legality—Whether transaction involves sale—Whether there is any distinction between registered and unregistered clubs.—The term "sale of goods" in entry 54 of List II in the Seventh Schedule of the Constitution should be understood in the same manner as it is understood in section 4 of the Sale of Goods

Act, 1930. Therefore in a transaction of sale of goods which is liable to tax, there must be concurrence of the four elements, *viz.*, (1) parties competent to contract; (2) mutual assent; (3) a thing, the absolute or general property in which is transferred from the seller to the buyer; and (4) a price in money paid or promised. A release by a joint-owner in favour of another joint-owner, even for a price, cannot be considered as a sale. There is no limit to the creation of a fiction in a statute by a Sovereign Legislature. But, where the legislative authority is limited or circumscribed, as for example by the Constitution, a fiction which has the effect of extending the scope of an enactment so as to transgress the constitutional limits must be invalid, for a Legislature cannot do indirectly what it cannot do directly. In other words, if the effect of the deeming provisions in the Explanations in clauses (k) and (t) of section 2(1) of the Mysore Sales Tax Act, 1957, were to bring to tax transactions which are not sales, those provisions will be *ultra vires* of the powers of the State Legislature. A power to enact a law with respect to tax on the sale of goods under entry 54 must, to be *intra vires*, be one relating in fact to sale of goods, and, accordingly, the State Legislature cannot, in the purported exercise of its power to tax sales, tax transactions which are not sales by merely enacting that they shall be deemed to be sales. A purely members' club which makes purchases through a secretary or manager and supplies the requirements to members at a fixed rate does not in law sell these goods to members but merely distributes them, all the essential elements of a sale in the transaction being wanting. The State Legislature is not competent to enact any law imposing sales tax on such supplies and therefore sections 2(1)(k) and 2(1)(t) to the extent they attract supplies made by clubs, registered as well as unregistered, to their members, to tax under the Act are *ultra vires* of the powers of the State Legislature and consequently void and inoperative. The Explanation to section 2(1)(k) and Explanation I to section 2(1)(t) are, however, not violative of Article 14 of the Constitution.—**CENTURY CLUB AND OTHERS v. THE STATE OF MYSORE AND ANOTHER** [1965] 16 S.T.C. 38 (Mys.).

Society, club or other unincorporated body—Whether falls within the opening or last portion of definition of "dealer"—Whether its activity should be carried on as business—Mahabaleshwar Club—Whether dealer—Whether liable to sales tax on the supply of refreshments to its members—Bombay Sales Tax Act (51 of 1959), Sec. 2(11), (19).—In view of the fact that the term "person" in the opening

part of the definition of the term "dealer" in section 2(11) of the Bombay Sales Tax Act, 1959, includes, by virtue of the definition in section 2(19), bodies "whether incorporated or not", societies, clubs and other unincorporated bodies fall within the opening part of section 2(11), and it is not possible to read the concluding part of section 2(11) as an independent clause governed by the verb "means". The Legislature has inserted the last part of the definition in section 2(11) *ex majore cautela* and it must be read as governed by the verb "includes". Therefore unregistered societies, clubs or other associations of persons which buy goods from, or sell goods to, their members would fall within the definition of "dealer" in section 2(11) and be liable to sales tax only if such sales or purchases have been effected by way of "business". As the object of the Mahabaleshwar Club was to provide recreation for its members, the Club, while supplying articles like food, refreshments, cigarettes etc. to its members, was not effecting a sale of those articles to its members by way of business and, therefore, the Club was not a dealer within section 2(11) of the Act.—*THE MAHABALESHWAR CLUB v. THE STATE OF MAHARASHTRA* [1968] 22 S.T.C. 123 (Bom.).

COAL

Cinder—*Whether coal and exempt under Notification No. ST-911/X dated 31st March, 1956, issued under U.P. Sales Tax Act, 1948.*—Coal was exempt from sales tax by Notification No. ST-911/X dated 31st March, 1956, issued under section 4 of the U.P. Sales Tax Act, 1948: *Held*, that "cinder" is not "coal" and therefore "cinder" was not exempt from sales tax under the notification. The mere fact that in dictionaries words are explained and elucidated by reference to other words is not the final test of the exact shade of meaning of a particular word.—*MAHABIR SINGH RAM BABU v. ASSISTANT SALES TAX OFFICER, FIROZABAD, AND ANOTHER* [1962] 13 S.T.C. 248 (All.).

Cinder—*Whether included in entry "coal, including coke in all its forms".*—Item 1 of the Second Schedule to the Madras General Sales Tax Act, 1959, "coal, including coke in all its forms", does not include cinder. Cinder is the residue or ash that is left when coal or coke is burnt and is removed of its combustible matter.—*M. VARADARAJULU NAIDU v. THE STATE OF MADRAS AND ANOTHER* [1965] 16 S.T.C. 684 (Mad.).

Coal—*Whether includes charcoal—Rate of tax.*—The word "coal" occurring in a fiscal statute has to be understood in its popular and commercial sense. In India the word "coal" as used in commerce includes charcoal and therefore charcoal is covered by entry No. 1 of Part III of

Schedule II to the Madhya Pradesh General Sales Tax Act, 1958, and sales of charcoal are taxable at 2 per cent.—*COMMISSIONER OF SALES TAX, MADHYA PRADESH v. JASWANT SINGH CHARAN SINGH* [1966] 17 S.T.C. 527 (M.P.). On appeal to Supreme Court this decision was affirmed. See below.

—Charcoal is included in the word "coal" specified in entry 1 of Part III of Schedule II to the Madhya Pradesh General Sales Tax Act, 1958, and is taxable only at the rate of 2 per cent. While construing the word "coal" in entry 1 of Part III of Schedule II to the Act, the test that would be applicable is, what is the meaning which persons dealing with coal and consumers purchasing it as fuel would give to that word. A sales tax statute, being one levying a tax on goods, must, in the absence of a technical term or a term of science or art, be presumed to have used an ordinary term as "coal" according to the meaning ascribed to it in common parlance. Viewed from that angle, both the merchant dealing in coal and a consumer wanting to purchase it would regard coal not in its geological sense but in the sense as ordinarily understood and would include "charcoal" in the term "coal". While interpreting items in statutes like the Sales Tax Acts, resort should be had not to the scientific or technical meaning of such terms but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, to their commercial sense. Decision of the Madhya Pradesh High Court in *Commissioner of Sales Tax, Madhya Pradesh v. Jaswant Singh Charan Singh* [1966] (17 S.T.C. 527) affirmed.—*COMMISSIONER OF SALES TAX, MADHYA PRADESH, INDORE v. JASWANT SINGH CHARAN SINGH* [1967] 19 S.T.C. 469 (S.C.).

Coal supplied to consumers outside taxing State pursuant to directions of Coal Commissioner under Colliery Control Order, 1945—Sales whether inter-State—Whether outside the State.—During the financial years 1954-55, 1955-56 and 1956-57, the appellant colliery supplied coal to allottees outside the taxing State (Hyderabad and after reorganisation Andhra Pradesh) pursuant to directions of the Coal Commissioner issued under the Colliery Control Order, 1945. Under that Order, the supply, use and disposal of coal were strictly regulated from the stage of production to that of consumption. The procedure for the supply was as follows: The Coal Commissioner authorised the appellant to despatch to specified consumers, coal not exceeding the quantities mentioned. The consumer then requested the appellant to despatch by rail the quantity of coal allotted and gave instructions as to booking,

the name of the consignee and the collection of the price. The appellant loaded the coal in railway wagons making out a "sale note" mentioning the cost per ton F.O.R. colliery, with freight to pay. So far as the appellant was concerned, property in the coal consigned passed to the allottee when the goods were loaded into the railway wagons for conveyance and thereafter all losses and any new taxes had to be borne by the consignee. The appellant claimed that it was not liable to be taxed under the Hyderabad General Sales Tax Act, 1950, on the coal supplied by it to allottees outside the taxing State on the ground (a) as regards the period April 1, 1954, to September 6, 1955, that the sales fell within the Explanation to Article 286(1)(a) of the Constitution; (b) as regards the period September 7, 1955, to September 10, 1956, that the sales were either Explanation sales or inter-State sales; (c) as regards the period September 11, 1956, to January 4, 1957, that they were inter-State sales and not taxable by the State; and (d) as regards the period January 5, 1957, to March 31, 1957, that they were inter-State sales and chargeable under the Central Sales Tax Act, 1956, alone: *Held*, (i) that as coal supplied pursuant to directions of the Coal Commissioner issued under the Colliery Control Order, 1945, was meant for consumption by the allottee, and where the allottee was outside the State it was supplied for the purpose of consumption in the State in which the allottee resided or carried on business, the sales in the first two periods were not liable to tax by virtue of the Explanation to Article 286(1)(a); *Shree Bajrang Jute Mills v. State of Andhra Pradesh* [1954] (15 S.T.C. 430) (S.C.) applied. (ii) that the sales in the second period were also inter-State sales and the State had, during that period, no power to levy sales tax on such sales; (iii) that the State had no power to tax the sales during the third and fourth periods as they were inter-State sales: coal was transported from the colliery of the appellant to the consumers outside the taxing State as a result of a covenant or incident of the contract of sale. Decision of the Andhra Pradesh High Court in *Singareni Collieries Co. Ltd. v. State of Andhra Pradesh* [1961] (12 S.T.C. 765) and *Singareni Collieries Co. Ltd. v. Commissioner of Commercial Taxes* [1961] (12 S.T.C. 838) reversed. [Their Lordships did not consider the question of the scope of the revisional jurisdiction of the Commissioner under section 15 of the Hyderabad General Sales Tax Act, 1950, raised in *Singareni Collieries Co. Ltd., Hyderabad v. Commissioner of Commercial Taxes, Hyderabad* [1961] (12 S.T.C. 838). As the appellant never raised at any stage before the taxing authorities

or even before the High Court the question whether the transactions were sales under the general law of sales of goods, their Lordships also assumed that the transactions were sales.]—*SINGARENI COLLIERIES CO., LTD. v. COMMISSIONER OF COMMERCIAL TAXES AND OTHERS* [1966] 17 S.T.C. 197 (S.C.).

Supply of coal under Colliery Control Order, 1945—Agreement entered into by broker with State Government for supply of coal from collieries outside State—Broker receiving only brokerage from collieries—Whether dealer—Liability to sales tax—Rajasthan Sales Tax Act (29 of 1954), Sec. 2(f).—*STATE OF RAJASTHAN AND ANOTHER v. KARAMCHAND THAPPAR AND BROS.* [1965] 16 S.T.C. 412 (S.C.).

Supply of coal by colliery to parties through commission agents—Whether agents dealers.—See *THE STATE OF BOMBAY v. RATILAL VADILAL & BROS.* [1961] 12 S.T.C. 18 (S.C.).

Supply of charcoal and firewood to Government hospitals for preparing food and boiling water—Whether sale for domestic use—Whether exempt from levy of sales tax.—*J. VAMANA PRABHU v. THE STATE OF MYSORE* [1967] 20 S.T.C. 38 (Mys.).

Dealer in coal—Casual sale of machinery—Liability to sales tax.—A casual sale of machineries by a dealer in coal is not liable to be included in the turnover of the dealer.—*COMMISSIONER OF SALES TAX, BIHAR v. BASTA COLLA COLLERY Co. LTD.* [1968] 21 S.T.C. 454 (Pat.).

COCHIN SALES TAX ACT

(See under TRAVANCORE-COCHIN GENERAL SALES TAX ACT.)

COCOGEN

Whether vegetable oil and exempt.—Cocogen is a vegetable oil for the purpose of item 12 of the old unamended Schedule II to the Central Provinces and Berar Sales Tax Act, 1947. It is a vegetable oil in the sense that it is purely of vegetable origin as opposed to animal origin. The mere fact that, in the course of manufacture, the raw material is subjected to "a highly complicated process of refinement" does not affect the character which it derives from its origin.—*TOMCO SALES DEPARTMENT, KINGSWAY, NAGPUR v. THE STATE* [1952] 3 S.T.C. 463.

COCONUT

Coconut—Whether oil-seed—Imposition of sales tax at 2 per cent. under Sales Tax Act—Further imposition under section 11, Madras Commercial Crops Markets Act, 1933—Legality.

—See under CENTRAL SALES TAX ACT, 1956, page 241 *supra*.

Coconuts—Whether oil-seeds—Refund of tax levied on declared goods when they are subsequently sold in the course of inter-State trade.—See under CENTRAL SALES TAX ACT, 1956, page 240 *supra*.

Coconuts, Groundnuts and Jira—Whether oil-seeds—Rate of tax.—Every article or seed which can yield oil is not an oil-seed as contemplated by item No. 3 of Part II of Schedule I of the C.P. and Berar Sales Tax Act, 1947. The test is not whether oil can be extracted from a fruit or seed, but it is whether in common parlance the article is known as "oil-seed" used principally for the extraction of oil. Judged by this test, it cannot be said that coconuts, groundnuts and jira fall within the meaning of the term "oil-seeds" as used in item No. 3 of Part II of Schedule I to the Act. Therefore under section 5(1)(c) sales tax leviable on them is at the rate of six pies in a rupee.—COMMISSIONER OF SALES TAX, MADHYA PRADESH, INDORE *v.* BAKHAT RAI AND CO. [1966] 18 S.T.C. 285 (M.P.).

Coconuts—Whether oil-seeds—Taxing statutes—Interpretation of words.—Coconuts are not oil-seeds within the meaning of item 6(a) of the Second Schedule to the Madras General Sales Tax Act, 1959. In interpreting words of common usage appearing in a taxing statute, the meaning which is popular rather than one which is technical has to be adopted. Not every seed from which oil can be extracted can be captioned as an oil-seed. Oil can be extracted from many seeds by adopting a skilled technical process; but it would not be proper to conclude legally that seeds from which oil can be extracted by the adoption of such process can be deemed and equated to oil-seeds as understood in common parlance. Tax cannot be the result of intendment, but the produce of express specification. If two interpretations are possible to a word or expression in a taxing statute, the meaning which leans to the benefit of the subject has to be adopted.—S. KANNAPPA MUDALIAR *v.* THE STATE OF MADRAS [1968] 21 S.T.C. 41 (Mad.).

Coconut including copra—Whether coconut and copra liable to tax separately.—The intention in substituting the words "coconut including copra" for the word "coconut" in column (2) of item 35 of Schedule I to the General Sales Tax Act, 1125, by the General Sales Tax (Second Amendment) Act, 1958, is not to tax coconut and copra separately. Therefore an assessment of

the turnover relating to last purchase of copra is not legal.—POULOSE BROS. *v.* THE STATE OF KERALA [1963] 14 S.T.C. 40 (Ker.).

—As the General Sales Tax Act, 1125, had been repealed by the time the General Sales Tax (Validation) Ordinance (1 of 1964) and the General Sales Tax (Validation) Act (8 of 1964) were placed on the Statute-Book, Ordinance No. 1 of 1964 and Act No. 8 of 1964 did not effect any amendment as intended, for lack of a parent Act on which the amendment could operate. Therefore Ordinance No. 1 of 1964 and Act No. 8 of 1964 were totally ineffective for the purpose of getting over the impact of the decision in *Poulose Bros. v. State of Kerala* [1963] (14 S.T.C. 40). Section 61 of the Kerala General Sales Tax Act, 1963, and section 4 of the Interpretation and General Clauses Act, 1125, also did not afford any assistance to the department.—K. C. ANTONY *v.* SALES TAX OFFICER, ERNAKULAM [1964] 15 S.T.C. 620 (Ker.).

Coconuts—Meaning of—Fully grown coconut with well developed kernel containing water—Whether tender or dried coconut—Liability to tax.—A fully grown coconut with a well developed kernel which contains water cannot be called either a tender or a dried coconut. This category of coconuts is excluded from the Explanation in Schedule III of the Andhra Pradesh General Sales Tax Act, 1957, and therefore purchases of such coconuts cannot be taxed under section 6 read with Schedule III of the Act. [The Court observed that if sales or purchases of coconuts, which are neither dried nor tender, can be taxed under provisions other than section 6 read with Schedule III, it will be open to the authorities to bring them to tax.]—SRI KRISHNA COCONUT CO. *v.* COMMERCIAL TAX OFFICER, AMALAPURAM [1965] 16 S.T.C. 511 (A.P.).

Coconuts—Copra—Liability of copra to sales tax—Last point of purchase—Meaning of.—According to explanation to item 5, Third Schedule to the Andhra Pradesh General Sales Tax Act, 1957 (as amended by Act 16 of 1963), dried coconuts, shelled or unshelled, including copra come within the definition of coconuts. Therefore shelled or unshelled dried coconuts including copra are exigible to tax at the last point of purchase. The last point of purchase within the State is the point at which the commodity is consumed. When once dried coconut, shelled or unshelled, including copra is converted into oil by a dealer, it is no longer coconut and the dealer becomes the last purchaser liable to pay tax. *K. A. Karim v. The Sales Tax Appellate Tribunal, Kerala* [1963] (14 S.T.C. 36) and *Poulose Bros. v. The State of Kerala* [1963] (14 S.T.C. 40) distinguished.—KUCHI

RAJESWARA SASTRY AND SONS AND ANOTHER v. COMMERCIAL TAX OFFICER, AMALAPURAM [1967] 20 S.T.C. 548 (A.P.).

Watery coconuts—*Whether chargeable to tax only on first sale during period August-September, 1966—Whether second sale of watery coconuts liable to tax under Central Sales Tax Act—Stage of levy on coconuts during different periods stated.*—The assessee purchased watery coconuts from registered dealers in the State and exported them to other States during the period August-September, 1966. The assessee claimed that these transactions were not liable to be taxed under the Central Sales Tax Act, 1956, inasmuch as under the Andhra Pradesh General Sales Tax Act, 1957, watery coconuts during the period August-September, 1966, were liable to tax only at the first sale point: *Held*, (1) that during the period 1st April, 1965, to the date when the Andhra Pradesh General Sales Tax (Second Amendment) Act (18 of 1966) came into force, i.e., 23rd December, 1966, tax on watery coconuts was at first sale point in accordance with G. O. Ms. No. 608 dated 29th April, 1965, read with section 5. The addition of item 10 in Schedule II to the Act by the Amendment Act had prospective effect only and did not affect the period between 1st April, 1965, and 23rd December, 1966, though the Amendment Act had limited retrospective effect for the period 1st August, 1963, to 31st March, 1965; (2) that as under the State Act, during the period August-September, 1966, levy on watery coconuts had to be made only on the first sale point, tax under the Central Sales Tax Act, 1956, could not be levied on any subsequent sales. Section 8 of the Central Sales Tax Act, 1956, has nothing to do with the levy and collection of tax but only with the rate at which tax is to be collected if a transaction attracts the levy, but where the transaction itself does not attract the levy there is no question of it being taxed at any particular rate. Section 9 deals with the levy of tax and it clearly lays down that the levy under the Central Act is referable to the levy under the State Act, so that if under a State Act, the levy has to be made in a particular manner, the levy under the Central Act has also to be made in the same manner. Therefore whatever is taxable under the State Act alone is taxable under the Central Act, so that if under the Andhra Pradesh General Sales Tax Act a transaction of sale cannot be taxed, a similar inter-State sale transaction cannot also be taxed under the Central Sales Tax Act.—SRI KRISHNA COCONUT COMPANY, AMBAJIPET v. COMMERCIAL TAX OFFICER, AMALAPURAM [1968] 22 S.T.C. 404 (A.P.).

Coconut oil—*Deduction from turnover—Registered manufacturer of coconut oil—Sale of oil outside State—Right to deduction under rule 7(1)(k) read with rule 20.*—The assessee who was a registered manufacturer of coconut oil and cake was denied the deduction from his turnover under rule 7(1)(k) read with rule 20(2) of the Travancore-Cochin General Sales Tax Rules, 1950, on the ground that the oil manufactured by him was sold by him outside the State: *Held*, (1) that what was intended by the rules was a taxation of copra at the purchase point and the avoidance of sales tax in respect of oil extracted by a registered manufacturer from such copra to the extent of the value of copra used for the said manufacture in all those cases where but for the concession he would have been liable to pay both the purchase tax on copra and the sales tax on oil under the Travancore-Cochin General Sales Tax Act, 1125. The object of the rules was the avoidance of a double taxation by the State, one at the purchase point of copra, and the other at the sale point of oil. The concession would not be available to a registered manufacturer in a case where only one and not both the taxes could be realised from him under the provision of the Act; (2) that although the rules afforded a concession when the sale of oil was made within the State and denied the same when it was effected outside the State, they were not open to challenge under Article 303(1) of the Constitution of India; (3) that any restriction on the freedom of trade and commerce that might result from the impugned provisions could not be considered as the direct and immediate result of the provisions themselves and they did not therefore violate Article 301. Leave to appeal to Supreme Court granted.—A. V. FERNANDEZ v. THE STATE OF TRAVANCORE-COCHIN [1955] 6 S.T.C. 22 (Trav.-Co.). For the decision of the Supreme Court see next para.

—Section 26 of the Travancore-Cochin General Sales Tax Act, 1125, in cases falling within the categories specified under Article 286 of the Constitution of India, has the effect of setting at nought and of obliterating in regard thereto the provisions contained in the Act relating to the imposition of tax on the sale or purchase of such goods and in particular the provisions contained in the charging section of the Act and in rule 20(2) of the Rules and other provisions which are incidental to the process of levying such tax. Sales falling within the categories specified in Article 286 of the Constitution and the corresponding section 26 of the Act are therefore taken out of the purview of the Act and no effect is to be given to those provisions which would otherwise

have been applicable if section 26 had not been added to the Act. The non-obstante provision contained in section 26 has the effect of taking the transactions mentioned therein out of the purview of the Act with the result that the dealer is not required nor is he entitled to include them in the calculation of his turnover liable to tax thereunder. There is a broad distinction between the provisions contained in the Statute in regard to the exemptions of tax or refund or rebate of tax on the one hand and in regard to the non-liability to tax or non-imposition of tax on the other. In the former case, but for the provisions as regards the exemptions or refund or rebate of tax, the sales or purchases would have to be included in the gross turnover of the dealer because they are *prima facie* liable to tax and the only thing which the dealer is entitled to in respect thereof is the deduction from the gross turnover in order to arrive at the net turnover on which the tax can be imposed. In the latter case, the sales or purchases are exempted from taxation altogether. The Legislature cannot enact a law imposing or authorising the imposition of a tax on such sales and they should be excluded from the calculation of the gross turnover as well as the net turnover on which sales tax can be levied or imposed. The assessee, who was a registered manufacturer of coconut oil and cake, contended that in the calculation of his net turnover he was entitled to include the total value of oil sold by him irrespective of the fact whether these sales were effected inside the State or outside the State and to deduct therefrom the total value of copra purchased by him from which the whole quantity of oil sold by him was manufactured. He also claimed that under section 26, he was entitled to deduct the value of the oil sold outside State from the assessable turnover. The Sales Tax Authorities held that by virtue of section 26, the value of oil sold outside the State could not be included in the assessee's turnover and therefore he was not entitled to deduct from his gross turnover under rule 7(1)(k) the purchase price of coconut and/or copra allocated to the oil sold outside the State. The assessee filed a petition under Article 226 of the Constitution, but the High Court upheld the view of the Sales Tax Authorities and dismissed the petition: *Held*, that the conclusion reached by the High Court was correct and the calculations of the net turnover made by the Sales Tax Authorities were also correct. *A. V. Fernandez v. The State of Travancore-Cochin* [1955] (6 S.T.C. 22) affirmed.—*A. V. FERNANDEZ v. THE STATE OF KERALA* [1957] 8 S.T.C. 561 (S.C.).

Manufacturer of coconut oil—Application for registration and granting of certificate after completion

of manufacture—Right to deduction under rule 22(2).—In order to be entitled to the deduction under rule 22(2) of the Travancore General Sales Tax (Turnover and Assessment) Rules, 1124, the manufacturer of oil and cake must have been a "registered manufacturer" at the time of the manufacture and not at any time thereafter. The person entitled to the deduction under that sub-rule is "every manufacturer registered in pursuance of sub-rule (1) of rule 22" and the deduction is in respect of oil and cake "converted by a registered manufacturer". It could not therefore be said that any oil manufactured by a dealer who was unregistered at the time of manufacture was none the less oil manufactured by a registered dealer simply because the dealer chose to obtain a certificate of registration subsequent to the completion of the manufacture. The petitioner, a dealer who manufactured coconut oil and cake, was denied the deduction under rule 7(1)(k) of the Travancore General Sales Tax (Turnover and Assessment) Rules, 1124, in respect of the period 17th August, 1949, to 17th November, 1949, on the ground that, during that period, he was not a registered manufacturer under rule 22. The petitioner applied for the certificate of registration on the 15th November, 1949, and the Sales Tax Officer issued him a certificate which was made valid from 17th November, 1949, the date when the officer received his application: *Held*, that the petitioner was not entitled to the deduction for the period 17th August, 1949, to 17th November, 1949, because during that period he was not a registered manufacturer of coconut oil within the meaning of rule 22. Rule 18 of the Madras Rules and rule 22 of the Travancore Rules are not identical in wording and there is no form prescribed under the Travancore Rules on the lines of Form A-9 of the Madras Rules. *State of Madras, In re* [1954] (5 S.T.C. 161) distinguished.—*T. P. VARIATH v. THE BOARD OF REVENUE AND ANOTHER* [1956] 7 S.T.C. 12 (Trav.-Co.).

Manufacturer of coconut oil—Purchase of imported and local copra—Sale of oil and cake within State and in the course of inter-State trade—Use of oil in manufacture of soap—Method of assessment.—The assessee, a manufacturer of coconut oil, purchased both imported and local copra. There was no dispute as regards the exemption from tax of a portion of the oil and cake produced in the mill and sold in inter-State trade and the portion of the oil used for the manufacture of soap in the assessee's soap works. The question was whether the value of oil and cake sold within the State did not attract tax by virtue of a notification dated 25th March, 1958, issued under

section 6 of the General Sales Tax Act, 1125 : *Held*, (1) that so long as the assessee effected the purchase of 316 coconuts or 100 pounds of copra and the purchase was assessed or was liable to assessment under the Act, he would be entitled to a deduction to the extent of that assessment or liability to assessment from the tax due under the Act on the sale of 62·5 pounds of oil and 37·5 pounds of cake; (2) that as the assessee had purchased a quantity of local copra sufficient to produce the oil and cake sold within the State, he was only entitled to an exemption to the extent provided by the notification from the tax due on the value of oil and cake sold within the State.—*THE MALABAR OIL MILLS, VALAPAD v. THE STATE OF KERALA* [1963] 14 S.T.C. 106 (Ker.).

Sale of coconut by lessee of coconut topes—Liability to sales tax.—The usufruct of coconut trees is horticultural produce and therefore sale of coconuts by a lessee of coconut topes, who is entitled to enjoy the usufruct of the coconut trees, is not liable to tax by virtue of section 2(r) of the Madras General Sales Tax Act, 1959. *Narayana v. Subramanian* [1937] (I.L.R. 1937 Mad. 364) and *Arumuga Vettian v. Angamuthu Nattar* ([1965] 1 M.L.J. 170) referred to.—*K. M. JAMAL MYDEEN v. THE STATE OF MADRAS* [1968] 22 S.T.C. 45 (Mad.).

COFFEE

Coffee—Whether includes “French coffee”.—The expression “coffee” as found in section 5(v) of the Madras General Sales Tax Act, 1939, would not include French coffee, which is made by an admixture of coffee powder and chicory powder.—*THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES, MADURAI DIVISION v. IYANAR COFFEE AND TEA Co., TUTICORIN* [1962] 13 S.T.C. 457 (Mad.).

Whether includes coffee powder.—Coffee powder is included in the term “coffee” in section 5(v) of the Madras General Sales Tax Act, 1939. The comprehensive definition of coffee contained in the 1959 Act is no indication that the term “coffee” used in the previous enactment should have a restricted meaning. *Cotton v. Vegan and Co.* ([1896] A.C. 457) referred to.—*IYANAR COFFEE AND TEA Co., TUTICORIN v. THE STATE OF MADRAS* [1962] 13 S.T.C. 290 (Mad.).

COLLECTOR

(See also APPEAL, REVISION and COMPOSITION.)

Collector in section 12(7), Orissa Act, meaning of.—The word “Collector” in section 12(7) of the Orissa Sales Tax Act, 1947, is not different from the Collector in section 23(3) and it includes both

the original assessing officer and the revising authority.—*BASUDEB HOTA AND OTHERS v. STATE OF ORISSA* [1958] 9 S.T.C. 663 (Ori.).

Whether Court.—See COURT-FEES.

COMMERCIAL ARTIST

[See under DEALER and ADVERTISING FIRM.]

COMMERCIAL TAX OFFICER

(See REVISION and SALES TAX AUTHORITIES.)

COMMISSION AGENT

(See also BROKER, AUCTIONEER and ADVERTISING FIRM.)

1. Commission agent whether dealer.
2. Nature of liability to tax.
3. Licence.
4. Prosecution for non-payment of tax.
5. Miscellaneous.

Commission agent—Whether dealer.—A person who only acted as broker or commission agent and brought the seller and the buyer together cannot be regarded as a dealer within the meaning of the Madras General Sales Tax Act, 1939, with a turnover in the business of purchasing and selling goods. Consequently he cannot be charged for failure to pay sales tax within the time allowed, an offence punishable under section 15 of the Act read with section 10.—*PUBLIC PROSECUTOR v. NARASIMHA REDDY* [1947] 1 S.T.C. 167 (Mad.).

—A commission agent falls within the definition of “dealer” in section 2(b) of the Madras General Sales Tax Act, 1939.—*THE STATE OF ANDHRA PRADESH v. FIRM OF ILLUR SUBBAYYA CHETTY* [1961] 12 S.T.C. 257 (F.B.) (A.P.).

—See also *AYYANNA SETTY v. STATE OF MYSORE* [1961] 12 S.T.C. 731 (Mys.).

Commission agent having dominion over and possession of goods.—A commission agent who has dominion over and possession of the goods in which he deals would fall within the definition of “dealer” in section 2(c) of the Central Provinces and Berar Sales Tax Act, 1947. *Dinanath Mahadeo Dalal v. The State* [1952] (3 S.T.C. 107) distinguished.—*RAMACHANDRA RAMPAL v. THE STATE* [1952] 3 S.T.C. 109.

Commission agent licensed by regulated market.—The holder of a licence issued by the Regulated Market to act as a commission agent in selling the goods brought by ryots and sellers to Mysore city is only a broker and therefore

need not take out a licence under section 9 of the Mysore Sales Tax Act. Even if he has not taken out a licence under section 9, he cannot be taxed under section 3. Section 9 is not a charging section. It provides for the exemption of a person obtaining a licence. It cannot imply that all those who do not have the licence may be taxed as what is material is their being "dealers" and not licensees.—R. NANJIAH, *In re* [1954] 5 S.T.C. 443 (Mys.).

Selling agent inside State for goods manufactured by mill outside State.—Under the Bengal Finance (Sales Tax) Act, 1941, unless the sales were effected by the dealer and the sale proceeds were received by him such sales could not be included in his taxable turnover and he would not be liable to pay sales tax thereon. The assesseees were commission agents in West Bengal for sale of certain goods manufactured by a mill in Kanpur. Under the agreement the assesseees had not, in the customary course of business, authority to sell the goods belonging to the principals. The mill had neither any office in West Bengal nor had they established any business through the assesseees or otherwise of selling the goods in West Bengal. The assesseees canvassed orders and forwarded them to the mill which accepted and executed them. The goods were directly supplied by the mill to the customers. The invoices were all made out in the names of the customers and the relevant documents were negotiated by the mill with the customers through the banks. The customers released those documents from the banks on payment of the relevant drafts and the sale price of the goods was thus received by the mill through those banks. The question was whether the assesseees fell within the definition of "dealer" in section 2(c) of the Bengal Finance (Sales Tax) Act, 1941: *Held*, (1) that Explanation 2 to section 2(c) did not apply to the case because the assesseees had not, in the customary course of business, authority to sell goods belonging to the principals; (2) that even though a number of orders placed by the assesseees with the mill were accepted by the mill in Kanpur, it could not be said that the mill was carrying on the business of selling goods in West Bengal. The business was, if at all, one of selling goods in Kanpur and despatching them to West Bengal for the purpose of consumption therein. These transactions were, therefore, not covered by Explanation 3 to section 2(c) of the Act and the assesseees could not in respect of such business be deemed to be a "dealer" within the meaning of that explanation; (3) that as the assesseees did not at any time handle the goods or receive the sale price, they

were not liable to sales tax in respect of these transactions, even though, perchance, they could be included within the expanded definition of "dealer" in Explanation 3 to section 2(c).—MAHADAYAL PREMCHANDRA v. COMMERCIAL TAX OFFICER, CALCUTTA, AND ANOTHER [1958] 9 S.T.C. 428 (S.C.).

Supply of coal by colliery to parties through commission agents—Whether agents dealers.—See THE STATE OF BOMBAY v. RATILAL VADILAL & BROS. [1961] 12 S.T.C. 18 (S.C.).

Supply of coal under Colliery Control Order, 1945—Agreement entered into by broker with State Government for supply of coal from collieries outside State—Broker receiving only brokerage from collieries—Whether dealer—Liability to sales tax.—STATE OF RAJASTHAN AND ANOTHER v. KARAMCHAND THAPPAR AND BROS. [1965] 16 S.T.C. 412 (S.C.).

Assessee carrying on independent business of selling textile goods—Also selling goods of Government Handloom Textile Marketing Organization—Whether dealer.—See COMMISSIONER OF SALES TAX v. MOHAPATRA [1962] 13 S.T.C. 412 (Ori.).

Broker, whether dealer.—A person who does not carry on any business of selling or supplying goods but acts as an intermediary and brings about transactions between the seller and the buyer and recovers his remuneration either from one or both of the parties is only a broker and cannot be called a dealer within the meaning of section 2(c) of the Central Provinces and Berar Sales Tax Act, 1947.—DINANATH MAHADEO DALAL OF NAGPUR v. THE STATE [1952] 3 S.T.C. 107.

Broker—Selling agent for rubber and tea companies.—The petitioner was the selling agent in respect of rubber and tea on behalf of certain companies. He merely brought the purchasers and sellers together and the goods never passed into his possession. He was not keeping an account of the orders booked but kept only an account of the commission received: *Held*, that the petitioner was only a broker and was not a dealer under the Madras General Sales Tax Act, 1939, and he was not liable to pay sales tax on the commission that he received.—K. T. CHERIAN, *In re* [1954] 5 S.T.C. 323 (Mad.).

Commission agent selling goods brought by cultivators—Whether carries on business of buying or selling on behalf of principals—Liability to sales tax.—A broker who merely brings the buyer and seller together but does not carry on the business of buying or selling goods on behalf of his

principals would not be a "dealer" within the meaning of section 2(c) of the U.P. Sales Tax Act, 1948, prior to its amendment by Act 29 of 1961. The assesseees were dealing in foodgrains, oil-seeds and cotton as commission agents. Cultivators brought their goods to the assesseees for sale and the goods were sold to buyers in the presence of the sellers at the price stipulated by them on the same day or the next day. It was found that *purchas* were issued by the assesseees both to the buyer and the seller and the assesseees realised the price of the goods from the buyer and paid it to the seller after charging their commission and that sometimes the price was realised afterwards. In some cases the assesseees got banks to advance money to the buyers against the stock pledged. The Judge (Revisions) held that the assesseees could not be said to be dealers in respect of those transactions which had been completed between the buyers and the sellers on the same day or the next day and the price was settled with the approval of the sellers. On a reference: *Held*, that the view of the Judge (Revisions) was correct. [The Court did not consider the question whether in respect of the sales which were not effected on the same day or the next day, the property in the goods passed to the assesseees or not.] *N. Ayyanna Setty & Sons and Others v. State of Mysore* [1961] (12 S.T.C. 731) relied on. *The Anakapalli Co-operative Marketing Society, Anakapalli v. The State of Andhra Pradesh* [1966] (18 S.T.C. 328), *Thakur Das Hukum Chand v. Commissioner of Sales Tax, U.P., Lucknow* [1963] (14 S.T.C. 646) and *Sarju Pd. Pritam Lal v. Judge, Revisions, Sales Tax, U.P.* [1963] (14 S.T.C. 884) distinguished.—COMMISSIONER, SALES TAX, U.P. *v. VIJAY KUMAR KRISHNA KUMAR* [1968] 21 S.T.C. 37 (All.).

Selling agent—Sale of jaggery—Tax on first sale.—The power conferred on the State Legislature by entry 54 in List II of the Constitution can be exercised only when there is a sale by which there is a transfer of ownership of property and does not extend to tax transactions which do not constitute sales as understood either in the Indian Sale of Goods Act, 1930, or under the General Sales Tax Acts. Therefore the content of the expression "sale" is not enlarged by Explanation III to section 2(n) of the Andhra Pradesh General Sales Tax Act, 1957. The expression "goods are transferred" in that explanation is not intended to convey the idea of delivery only without transfer of ownership. The

respondents were carrying on business as commission agents. Agriculturists who manufactured jaggery from sugar-cane grown by them entrusted the jaggery to the respondents for sale on commission. The respondents sorted out the jaggery into different qualities, piled it up into heaps according to the quality and auctioned the heaps of jaggery in the presence of their principals or someone on their behalf. The respondents prepared the bills indicating the quality of the jaggery, the price and the total consideration and issued them to their principals. Out of the sale price, the respondents made certain deductions towards commission, *gumasta rusum* and *kola-garam*. The pattis furnished to the principals made no reference either to the *kolagaram*, *dhar-mam*, *valtar* and sales tax. The bills issued to the purchasers stated that the sales tax collected from them would be made over to the Government, and in most of the cases was paid to the Government. As jaggery was liable to sales tax only at the stage of the first sale in the State, the respondents contended that they were not liable to pay sales tax on the jaggery sold by them inasmuch as under Explanation III to section 2(n), a sale must be deemed to have taken place even at the time when the principals delivered their goods to the respondents: *Held*, that the first sale was effected by the respondents and not by the principals and therefore the respondents were liable to pay the tax. An explanation does not enlarge the scope of the original section. The principle of harmonious construction requires that an explanation cannot be read in a way inconsistent with the content of the main section. If a provision is capable of two constructions, that which is in consonance with its constitutionality should be adopted in preference to that which results in its being struck down as *ultra vires* or unconstitutional.—*THE STATE OF ANDHRA PRADESH v. T. R. SOMARAJU AND OTHERS* [1965] 16 S.T.C. 177 (A.P.).

Buying agent for principals—Agent placing orders and getting subsequent confirmation from buyer, debiting buyer with interest on money borrowed for clearing goods, getting a single consignment for several principals and stating in "C" declaration forms that goods are for sale.—The assesseees claimed that a certain sum represented the turnover of transactions in which they acted as buying agents and they were therefore not liable to sales tax thereon. The department however relied on the following circumstances to show that they were

not agents but were purchasing the goods themselves and later on selling them: The assesseees (1) placed the orders with the seller and obtained the confirmation from the buyers later on, (2) debited the buyers in some of the transactions with interest on the money the assesseees borrowed for clearing the goods, (3) booked orders on behalf of several customers, got a single consignment and later on delivered the goods as per the orders placed by the various customers, and (4) stated in the "C" declaration forms that they purchased the goods for sale: *Held*, that these circumstances would not affect the real nature of the transactions which were buying agency transactions. If the correspondence showed that the assesseees acted as buying agents, the fact that the assesseees had given incorrect or wrong particulars in the "C" Forms would not convert the buying agency transactions into transactions of purchase by the assesseees for their own benefit.—*K. P. SITARAM & Co. v. THE STATE OF MADRAS* [1965] 16 S.T.C. 436 (Mad.).

Nature of exemption under section 8, Madras Act.—A commission agent cannot claim exemption under section 8 of the Madras General Sales Tax Act, 1939, if he takes anything other than the agreed commission. If rusums taken by an agent are in the nature of agreed commissions, it cannot be said that the agent is not entitled to the exemption under section 8. If, acting as a buying or selling agent, a commission agent had collected any sum of money clandestinely without disclosing its nature to his principal on such transactions he cannot claim the benefit of section 8. The point of distinction is not that the agent has taken something more than the so-called agreed commission; but the point is whether the amount taken can be brought within the ambit of the term "agreed commission" by the principal acquiescing in it or allowing the agent to take the money. It is unnecessary, as the section stands, that the agreement should be beforehand. It would be quite sufficient if the agreement comes into existence after the purchase or sale. The real import of section 8 is that the agent should act only as a medium for the transfer of goods from one party to another and for acting as such a medium, intermediary, or agent, he should be paid a remuneration or commission. Such transaction might sometimes result in the medium, intermediary, or agent acting as vendor or purchaser himself as understood in law. But even then he is only an agent and he should strictly conform to the mandatory

provisions of section 8 in order to get exemption. Where a commission agent acting as agent for selling goods did not pay rsum to the dealers from whom they got the goods but collected such rsum from their purchasers, who were their principals the exemption under section 8 could not be invoked. *Govinda Menon, J.*—A person who, for an agreed commission or brokerage, buys or sells goods on behalf of known principals, specified in his accounts in respect of each transaction, will be a "dealer" within the meaning of section 2(b) of the Madras General Sales Tax Act, 1939, and will be liable to be taxed but for the provisions of section 8.—*THE PROVINCE OF MADRAS v. THE FIRM OF KANIGOLLA SIVALAKSHMINARAYANA AND ANOTHER* [1949] 1 S.T.C. 223 (Mad.).

—A commission agent who sells or buys on behalf of a principal is not a dealer within the meaning of section 2(b) of the Madras General Sales Tax Act, 1939, and is not liable to taxation in respect of the purchases and sales effected by him on behalf of the principal at his instance and such a transaction does not constitute his turnover. He need not apply and obtain a licence under section 8 of the Act. *Satyanarayana Rao, J.*—If a person buys or sells on behalf of a known principal, the exemption under section 8 is really unnecessary. The expression "known principal" in section 8 is not the same as "disclosed principal" and ought not to be contrasted with an "undisclosed principal" familiar under the law of contracts. "Known principal" is used in the section to emphasise that the principal on whose behalf the agent purports to act should not be a fictitious or non-existent principal so as to enable the agent to camouflage his transactions and escape taxation. The undisclosed principal is a person certainly known to the agent though not known to either the seller or the purchaser as the case may be. So long as the principal is known and is clearly indicated in the account so as to enable the Government to proceed to levy the tax on the turnover of such principal the agent is exempted from taxation. Section 8 is not a taxing section but a section which creates exemption on the assumption that otherwise the person is liable to taxation. It may be that the section was enacted by way of abundant caution in order to make the machinery of taxation move smoothly and with speed, but that cannot be treated as a section imposing a charge. A person who is a commission agent is not under a disability to act on behalf of a

purchaser and seller in the same transaction relating to the sale of goods. Even in such a case he would not be a dealer and no question of availing himself of the exemption under section 8 arises. If a person is otherwise not a dealer and the turnover is not his turnover, he does not become a dealer merely because he applies for a licence under section 8 of the Act; and even if he has violated the conditions of the licence the nature of the business is the determining factor. Section 8 is intended to cover transactions of accommodation contemplated by Explanation 4 to the definition of "turnover" in the Act. In such a case, notwithstanding the fact that at some point of time the ownership of the goods has vested in him while the purchase was made only to accommodate a particular person, if he has shown in his accounts the agreed commission or brokerage and acts on behalf of a known principal and not a fictitious and non-existing one and also makes it possible to levy the tax by including the turnover in the turnover of the seller's principal or purchaser's principal he would escape from the liability to pay the tax notwithstanding that the ownership had vested in him at some point of time. Similarly in some cases for the purpose of his principal he may himself buy goods but merely with a view to pass the title to the goods to his known principal. If the object of the purchase was not for his benefit but merely for the benefit of the principal or even if the sale was not for his benefit but for the benefit of a known principal, in such cases, if he fulfils the requirements of section 8 he would be exempt from taxation. Other cases in which the person really does not mean to buy or sell goods on his own account but the ownership vests in him for a moment may be within the purview of section 8. Viswanatha Sastri, J.—The Act being a fiscal enactment, the court is bound to give a fair and reasonable construction to its language without leaning to the one side or the other, remembering at the same time, that no tax can be imposed on citizens without words in the Act clearly showing an intention to levy the burden on them. It is a sound and well recognised principle that a "taxing statute must impose a charge in clear terms or fail, since it is to be construed *contra proferentum*". In construing a taxing enactment very little weight attaches to the argument that because a specific exemption from tax is found in it, other cases not specifically exempted must be deemed to have been charged to tax. Such exemptions are often introduced under the influence of excessive caution to quiet the fears of the timid and the unduly apprehensive. *Expressio unius* will not be *exclusio alterius* in such cases. A broker or commission agent who gets a

commission or brokerage both from the buyer and the seller of the goods at the same time and in respect of the same transaction will not lose the benefit of section 8, even if such a broker or commission agent were liable to be treated as a "dealer" which he is not. A brokerage or commission taken from the seller and buyer of goods with the knowledge of both is none the less an "agreed commission". Section 8 and rule 5 of the General Sales Tax Rules have to be read together. There may be cases where an agent buys goods himself and immediately thereafter sells the same goods to his principal for the cost price plus an agreed amount for commission. Conversely he may buy his principal's goods himself and then sell them to strangers for the cost price plus an additional sum representing his commission. In such cases an agent is, in law, a buyer or seller of goods, as the case may be, and would be a "dealer" within the definition in section 2(b) of the Act. But in truth and in fact he is really buying and selling for the benefit of his principal, charging a commission for himself as his remuneration. In such cases section 8 might well come into play and an agent of this description who takes out a licence under section 8 would be exempt from sales tax in respect of such of his transactions as are carried out in accordance with the terms of section 8 and the licence issued thereunder.—THE PROVINCIAL GOVERNMENT OF MADRAS *v.* NEELI VEERABHADRAPPA AND OTHERS [1950] 1 S.T.C. 245 (Mad.).

Nature of exemption—Distinction from broker.—A commission agent who is not a mere broker bringing together the seller and the buyer but who is entrusted with the goods by his seller principal with the authority to transfer the property and title in the goods to the buyer who obtains delivery from the commission agent himself without even being aware of the identity of the seller principal will fall within the definition of a "dealer" under the Madras General Sales Tax Act, 1939, and will be liable to sales tax under section 3 but for the exemption under section 8. Where certain commission agents who were licensed under section 8 collected *rusums* from the buyers, in addition to the usual commission which they obtained from their seller principals: *Held*, that the commission agents had not violated any of the conditions of the licences granted to them under section 8 because the *rusums* were collected in pursuance of a trade usage and they formed part of the agreed commission contemplated by section 8. A broker is an agent employed to make a bargain for another and receives a commission on the transaction

which is usually called brokerage. He has usually neither the custody nor the possession of the goods. It is the broker's duty to establish privity of contract between the principal and the third party. The broker cannot sell in his own name nor can be sued on the contract. In the case of a commission agent, the accepted mercantile practice is that he has control over or possession of the goods and he has the authority from the owner of the goods to pass the property in and title to the goods. If this is so, when a commission agent sells goods belonging to his principal with his authority and consent and without disclosing to the buyer the name of the owner, there is certainly a transfer of property in the goods from the commission agent to the buyer. A business which consists in such transactions can properly be described as a business of selling goods. A similar position would arise even in the case of a commission agent buying for an undisclosed principal. A commission agent doing this kind of business would fall within the definition of a "dealer" in the Madras General Sales Tax Act. Neither the definition of a "dealer" nor of "sale" contemplates as a necessary condition, that the goods sold should belong to the person selling or buying. There can be a sale or purchase on behalf of another. The learned Judges in *Government of Madras v. Veerabhadrappa* [1950] (1 S.T.C. 245; I.L.R. 1950 Mad. 421) went too far in holding that in no event and under no circumstances can a commission agent be deemed to be a person carrying on the business of buying or selling goods. The actual decision on the facts found in that case was unassailable. *Province of Madras v. Sivalakshminarayana* [1949] (1 S.T.C. 223; I.L.R. 1950 Mad. 421) considered.—*KANDULA RADHAKRISHNA RAO AND OTHERS v. THE PROVINCE OF MADRAS* [1952] 3 S.T.C. 121 F.B. (Mad.).

Liability to tax as dealer in the absence of licence under section 8.—The petitioners were commission agents for several resident and non-resident principals for the purchase of chillies, coriander seeds, pulses and tamarind which were taxable on sales under the Madras General Sales Tax Act, 1939. The petitioners were registered as dealers but they did not obtain a licence under section 8. The petitioners purchased the goods, took delivery of them from the sellers and despatched them on their own account mostly by railway. The railway receipt together with a copy of the invoice and a hundi for the aggregate amount of the price of the goods, freight, commission, incidental charges and *rusum*, was sent to local bankers who delivered these documents to the purchaser-principals against payment. No

separate bank accounts were kept by the petitioners for each of the purchaser-principals. The Deputy Commercial Tax Officer assessed the petitioners to tax on all the purchasing agency transactions on the grounds that they had collected sales tax under the guise of "*rusums*" in addition to the agreed commission and that they had not taken out a licence under section 8. On appeal, the Commercial Tax Officer cancelled the assessment in respect of the agency transactions on behalf of non-resident principals but confirmed the assessment in respect of those concerning resident principals. The Sales Tax Appellate Tribunal, by a majority, upheld the order of the Commercial Tax Officer. It was found that the "*rusum*" collected by the petitioners from their principals could neither be treated as part of the agreed commission nor as an amount, the collection of which was sanctioned by trade custom. The "*rusum*" represented an amount equivalent to that which would have been payable by the petitioners to the State by way of sales tax in case they were chargeable under the Act. *Held*, (1) that unless the levy was justified by the express terms of the Act and the Rules, the petitioners were not bound to pay the tax merely because they had collected it from their principals; (2) that the fact that the petitioners had not taken out a licence under section 8 would not matter so far as the purchases were concerned for they related to goods which were taxable only on sales or on the sales turnover. The petitioners were therefore not liable to pay tax on their purchase turnover though they were dealers; (3) that in respect of the goods sold within the State the petitioners were liable to tax as "dealers". Even if the petitioners collected sales tax under the name of "*rusum*" in order to protect themselves against a possible contingency of being made liable to sales tax on the purchase turnover it has still to be shown that the amounts collected were lawfully payable by way of tax to the State before they could be called upon to account for the collections. Section 8B is not a charging section but only an enabling provision authorising a registered dealer to collect what is lawfully payable as sales tax. Neither the State nor the dealer has the right to collect anything other than the tax lawfully payable under the Act. It is only if the levy of tax in the circumstance was authorised by the Act that the petitioners would come under a liability to pay over the collections to the State. There is no obligation on the petitioners as registered dealers to pay over to the Government amounts not lawfully collected by them as tax but they might be liable to refund the *rusums* collected by them to their purchaser-principals. *Radhakrishna Rao v. Province of Madras* [1952]

(3 S.T.C. 121) followed.—**GOLLA VENKATA SUBRAMANYAM v. THE STATE OF ANDHRA** [1956] 7 S.T.C. 599 (Andh.)

2. Liability to sales tax—Purchasing agent—Import of tin for Government on commission basis.—The petitioners agreed, during war, to import tin from China on behalf of the Government of India for a commission of 1 per cent., besides the actual bank and interest charges subject to a maximum of 1 per cent. Though the import licence had been issued, as a special case, in favour of the petitioners the goods were required for Government and payment was made by the Controller of Supplies at the ceiling price fixed by Government. At that time tin could not be imported by any private party: *Held*, that the petitioners were not liable to sales tax inasmuch as they were acting only as purchasing agents for the Government and not as dealers and taxation under the Act was confined to sales and did not extend to purchases. Though the contract for the supply of certain goods was between the petitioners and the Director-General of Supplies, delivery of the goods was made to the Controllers of Stores of different railways and debits were raised against the accounts of the railways: *Held*, that the mere form of contract was not material so long as it could be shown that the goods were actually delivered to the railways for their consumption and payment was made out of railway accounts. As sales to railway administration were exempted during the relevant period, the sales in the present case were not liable to sales tax. *Staynor & Co. v. Commercial Tax Officer* [1951] (2 S.T.C. 111) referred to.—**MATHURADAS GOVARDHANDAS v. STATE OF WEST BENGAL** [1956] 7 S.T.C. 490.

Sale of goods belonging to principals.—The word “principal” in Explanation 3 to section 2(t) of the Mysore Sales Tax Act, 1957, includes “principals” also and there is no provision in the Act which prohibits a commission agent from pooling the goods of several principals even when those principals agree to such a pooling. Therefore, the mere fact that a commission agent pooled the goods of the several principals after obtaining their consent in writing does not disentitle him from claiming the benefits of section 11. The petitioner was a commission agent holding a licence under section 11 of the Mysore Sales Tax Act, 1957. Growers of arecanuts entrusted to him for sale the arecanuts grown by them and authorised him in writing to grade the arecanuts and pool them with the arecanuts of the same grade entrusted to him by other growers and thereafter sell the same at the Bombay market at the best available prices. The

arecanuts thus pooled were sold in the Bombay market and the price fetched, after meeting the incidental expenses and deducting the commission due to the petitioner, was distributed between the several growers on the basis of the quality and quantity supplied by them. The Sales Tax Authorities held that the petitioner was not entitled to the privilege conferred on him under the Act and levied sales tax on him: *Held*, that the sales tax levied on the petitioner was illegal.—**SHERULE FAZLE & Co. v. COMMERCIAL TAX OFFICER, ADDITIONAL CIRCLE, SOUTH KANARA, MANGALORE** [1963] 14 S.T.C. 4 (Mys.).

Buying or selling on behalf of known principals for agreed commission.—Under the proviso to section 9 of the Hyderabad General Sales Tax Act, 1950, it is the agent carrying on the business of buying or selling on behalf of known principals for an agreed commission or brokerage that is liable to pay the tax. The principal is exempt, but the agent is at liberty to recover the tax paid by him from his principal.—**APPALLI ABDUL RAHIM & Co. v. DEPUTY COMMERCIAL TAX OFFICER, NINTH CIRCLE, ABID ROAD, HYDERABAD** [1960] 11 S.T.C. 357 (A.P.).

Provision that agent should purchase from principal and sell—Licence granted to agent under section 9—Effect.—In order to obtain the benefit under section 9 of the General Sales Tax Act, 1125, the dealer must not only show that he is a commission agent but also should have observed the terms of the licence. If the commission agent is really a purchaser, the licence erroneously granted under the section or renewed subsequently would not preclude the department from cancelling it after the department had been apprised of the correct position. Where vesting of ownership in the goods in an agent licensed under section 9 is to sell the goods of the principal, the earlier transfer would be incidental to the main purpose of making the person an agent and would not convert the transaction into one of sale. Therefore vesting of ownership in a commission agent licensed under section 9 is not sufficient to deprive the agent of the benefit of the licence. The agreement entered into by the petitioner with a company dealing in oils provided, *inter alia*, that the petitioner had to purchase the kerosene oil supplied by the company, pay for it and carry it at his risk. The company had the right to fix the minimum quantity of kerosene which the petitioner must order each month, the price at which the petitioner should sell the kerosene to his purchasers and the area in which he should sell it. The company might furnish, without being under any obligation, equipment and other

properties for receiving, storing or conveying the kerosene and could insure those properties and the kerosene stored in the warehouse. The petitioner had to keep an account of daily sales and must make them available for inspection by the representatives of the company. The petitioner was entitled to a discount on the price of kerosene paid to the company. On termination of agreement the petitioner had to deliver not only the company's properties but also the kerosene, and what was paid for was to be treated as repurchased by the company at the original price, less the discount and deductions. The petitioner was granted a licence under section 9 and it was renewed for some years: *Held*, that the position of the petitioner was that of an agent and not that of a purchaser of goods and therefore he would be entitled to the exemption on his sales of kerosene, if he had sold the kerosene in accordance with the licence that had been renewed in his favour under section 9.—*GOVERDHAN HATHIBHAI & Co. v. APPELLATE ASSISTANT COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX, TRIVANDRUM* [1961] 12 S.T.C. 464 (Ker.). This decision was reversed by the Supreme Court.—See below.

No right to sell expressly on behalf of known principal—Whether exemption can be given.—It is not any and every agent who becomes entitled to the benefit of section 9 of the General Sales Tax Act, 1125 (Kerala). It is only an agent "who for an agreed commission.....sells on behalf of known principals specified in his account in respect of each transaction" that may claim the benefit. If, therefore, an agent has not the right to sell expressly on behalf of known principals, the agent cannot get the benefit of section 9. The assessee selling kerosene under an agreement with Caltex (India) Ltd., contended that it was appointed agent of the company for sale of kerosene on commission and as it had been granted a licence under section 9, it was entitled to exemption under that section. One of the clauses in the agreement was in these terms: "The distributors (assessee) shall not have any right or authority to and shall not incur any debts or liability or enter into any contracts or transact any business whatsoever in the name of or for or on behalf of the company, and shall not represent himself in any way to be the agent of the company": *Held*, that even if the assessee was an agent of the company, for the sale of kerosene, it would not be entitled to the exemption under section 9, because it could not expressly sell on behalf of the company and it could not enter in its account the sales as such. Decision of the High Court of Kerala in *Goverdhan Hathibhai and Co. v. Appellate Assistant Commissioner of*

Agricultural Income-tax and Sales Tax, Trivandrum [1961] (12 S.T.C. 464) reversed.—*STATE OF KERALA v. GOVERDHAN HATHIBHAI AND Co.* [1964] 15 S.T.C. 314 (S.C.).

Buying and selling on behalf of known principals.—The essential ingredients of the definition of a "dealer" as required by the explanation under section 2(c) of the U.P. Sales Tax Act, 1948, are that the person in order to become a dealer must be (1) carrying on a business; (2) this business should be of buying and selling goods; (3) he should have the authority to buy or sell goods on behalf of his principals; and (4) he should have this authority in the customary course of business. The name by which a particular person may be called is immaterial so long as he fulfils the above requirements. Before making final assessments, Sales Tax Officers should give sufficient opportunity to assessee to lead evidence to prove whether they are or are not dealers. The result of any private enquiries made by the officers should be put to the assessee and they should be given an opportunity to meet the same. It will be open to the officers to take into account admissions made by assessee in their statements or return forms or otherwise that they have authority to sell goods on behalf of their principals. If the assessee relies on printed forms to show that they are in no way concerned with the transaction of sale, the officers should carefully scrutinise the genuineness of these forms and record a finding whether the forms are genuine or have not merely been got manufactured for purposes of escaping liability.—*TARA CHAND KALLOO RAM v. SALES TAX OFFICER, HAPUR CIRCLE, MEERUT* [1962] 13 S.T.C. 957 (All.).

Nature of liability—Commission agent of more than one principal—Each principal's turnover not exceeding taxable limit—Whether commission agent liable to tax.—The petitioners carried on business in jaggery as commission agents on behalf of various ryots by selling the jaggery on their behalf and collecting commission from them. As each principal's turnover did not exceed the taxable limit the petitioners claimed in the returns that no tax was payable by them: *Held*, that the words "on behalf of any principal" occurring in the definition of "dealer" in section 2(1)(e)(iv) of the Andhra Pradesh General Sales Tax Act, 1957, indicate that the agent is a dealer in respect of each of the principals, that he is deemed to be as many dealers as there are principals and that therefore the total turnover of the petitioners in respect of several principals could not be computed for assessing them when in fact the turnover of each one of the principals was below the non-taxable limit, i.e., Rs. 10,000 each. *India Coffee and Tea Distributing Co., Ltd., Madras*

v. State of Madras [1958] (9 S.T.C. 769) and *State of Mysore v. P. B. Hussain Kunhi & Co.* [1967] (19 S.T.C. 215) applied.—*IRRI VEERA RAJU AND OTHERS v. THE COMMERCIAL TAX OFFICER, TADEPALLIGUDEM AND ANOTHER* [1967] 20 S.T.C. 501 (A.P.).

Sale by unlicensed agent—Levy of tax on agent and again on principal in respect of same turnover—Legality.—When goods are sold by an unlicensed commission agent there is only one sale and in respect of that one sale, tax cannot be levied twice by the department, once in the hands of the commission agent treating him as a dealer and a second time in the hands of the principal treating the same turnover as the turnover of the principal. *Radhakrishna v. Province of Madras* [1952] (3 S.T.C. 121) referred to.—*THE STATE OF MADRAS v. POTHURI SRINIVASULU CHETTY & SONS AND OTHERS* [1954] 5 S.T.C. 202 (Mad.).

Sales by unlicensed commission agent—Levy of tax on principal and agent—Legality.—A commission agent is a dealer under the Madras General Sales Tax Act, 1939, and tax can be recovered from him if he has not taken out a licence under section 8. Although a commission agent makes the sale on behalf of the principal and he is authorised to transfer the property in the goods so as to vest the title thereto in the purchaser, this does not create the relationship of a vendor and vendee between the principal and agent. Up to the point of sale the commission agent acts as the agent of the principal and subsequently the relationship between them is one of debtor and creditor. A commission agent sells the goods in his own right, and he is only responsible to the principal for the sale proceeds. The sale cannot be said to be by the principal. Nor can the delivery of the goods to the agents for purposes of sale be treated as one of purchase and sale between them. The principal does not sell the goods and he cannot be regarded as a dealer within the meaning of section 2(b). Where goods are sold by a commission agent who is not licensed under the Madras General Sales Tax Act, 1939, and he has paid tax, as there is only one sale effected by the commission agent, the price for such sale cannot be treated as the turnover of the principal also and the latter cannot be required to pay tax for the second time. If a person is not a dealer, failure to comply with the requirements of section 9 does not attract the penal consequences contemplated by section 15 or 16 and he cannot be called upon to pay a fee by way of composition of the offence. *State of Madras v. Pothuri Srinivasulu Chetty & Sons* [1954] (5 S.T.C. 202) followed.—*IMMIDI SATYANARAYANA v. THE STATE OF MADRAS (NOW ANDHRA)* [1955] 6 S.T.C. 216 (Andh.).

Assessment and payment of tax—Whether principal can be made liable on the same transaction.

—Section 9 of the General Sales Tax Act, 1125, is an enabling provision by which the commission agents and brokers and those who satisfy the conditions mentioned in the section are exempted from the charge under section 3. If the provisions of section 9 are not satisfied, the agent himself may be liable to pay the tax and if tax has been paid by the agent, the principal cannot again be made liable for the same. If there has been assessment of the agent to the full extent or part of it, to that extent, an assessment cannot be made on the principal.—*Haji M. Kadar Mohammed Rowther & Company v. The State of Kerala* [1967] 20 S.T.C. 17 (Ker.).

Commission agent exempted under section 4(2), Rajasthan Act—Whether principal liable to sales tax.—Sales tax in respect of sales of goods belonging to the assessee effected in the year 1955 by his commission agent, who had been exempted under section 4(2) of the Rajasthan Sales Tax Act, 1954, was leviable on the assessee, inasmuch as the assessee as a dealer under the Act effected the sales thereof through his exempted commission agent.—*Lalchand Jalamchand v. Sales Tax Officer, Bikaner, and Others* [1966] 17 S.T.C. 235 (Raj.).

Commission agent selling tea of non-resident principal—Nature of liability to tax.—See *INDIA COFFEE AND TEA DISTRIBUTING COMPANY LTD. v. THE STATE OF MADRAS* [1955] 6 S.T.C. 47 (Mad.); [1958] 9 S.T.C. 769 (Mad.).

Sale through agents—Effect of taking out licence—Liability of principal and agent for tax.—A person whether himself sells direct or through an employee, or through a commission agent or through other means will come within the definition of a dealer in the Mysore Sales Tax Act, 1948, irrespective of the nature of the machinery he employs to sell the goods. A commission agent may be a principal in respect of any transaction done on his own account but there is nothing in law to prevent him from acting as an agent on behalf of others. If he deals in the capacity of an owner he must pay tax either as buyer or as seller but if he acts as a mere agent or as a broker, then the licence he has taken under section 9 will protect him provided he proves that he has sold the goods on behalf of a known principal, who is specified as such in his accounts though it is not necessary that he should disclose the principal to the persons who deal with him. Another important condition to entitle him to exemption is that the transaction should have been included in the turnover of the principal on whose behalf he deals, under the proviso to section 9. In the case of an unlicensed agent no

such exemption is available as he is deemed to be a dealer, like any others. The tax collected by him on the sale of goods must be paid over to the Government. In any case either the principal or the agent, not licensed, has to pay the tax, but tax need not be paid by both of them on the same transaction. In case the unlicensed agent himself pays the tax, the principal is exempted, but in that case the principal is bound to prove that the agent has in fact paid the tax, otherwise the responsibility of the principal will not cease. The inclusion in the turnover of sales through a licensed agent will relieve the agent from liability, but the principal cannot escape taxation by reason of omission of such sales in his annual turnover. Principals selling goods through commission agents are therefore, liable for taxation on such sales, even though the principals have not collected sales tax and have not included the said commission sales in their turnover. The agents who have not been licensed under section 9 can claim no exemption from tax in respect of sales effected by them. They are taxable as any other dealer and the principal who sells his goods to an agent will also be liable. Though the liability of both the principal and the unlicensed commission agent is joint and several, the tax on the same transaction cannot be collected twice or from both the principal and the agent. The burden is always on the dealer, on whom the liability for payment of tax primarily rests, to prove that a particular transaction is exempt by reason of payment through an agent or otherwise. *K. T. Pappanna Rowther, In re* [1953] (4 S.T.C. 292; A.I.R. 1954 Mad. 96) referred to.—*STATE OF MYSORE v. A. C. HANUMANTHAPPA* [1955] 6 S.T.C. 34 (Mys.).

—Agricultural produce—Exemption—Dealer—Scope of section 2(r), Madras General Sales Tax Act, 1959—Agent selling produce entrusted to him for sale by agriculturists—Turnover of agent—Whether exempt.—*THE STATE OF MADRAS v. TIRUCHENGODE CO-OPERATIVE MARKETING SOCIETY LTD.* [1965] 16 S.T.C. 760 (Mad.) (page 14 *supra*).

3. **Licence—Application for licence—Proper fee to be paid.**—Under section 6, a licence coupled with exemption can be granted at any time during the assessment year and when it is granted, only those transactions carried out in accordance with the terms and conditions of the licence are to be exempted. Transactions carried out prior to the date of the grant of the licence cannot be said to have been carried out in accordance with the terms and conditions of the licence and are therefore not exempted but are to be taxed under section 3. Though a licence

takes effect from the date of the presentation of the application, the licence fee to be paid is not for any particular period but is dependent upon the net turnover of the whole assessment year. Therefore if an assessee applied for the licence in the middle or even at the end of the assessment year it will have to pay the licence fee calculated on the basis of the net turnover of the whole year even though it would get the benefit of the exemption only in respect of the transactions carried out by it after the date of the presentation of the application. Under section 11 of the U.P. Sales Tax Act, 1948, the Judge (Revisions) has to state a case on the basis of whatever is found, or accepted as true, by him when disposing of the revision application and cannot make any further enquiry or re-decide the revision application. If a finding is given on the basis of material that would sustain it, even though there is contradictory or rebutting material, no question of law arises.—*THAKUR DAS HUKUM CHAND v. COMMISSIONER OF SALES TAX* [1963] 14 S.T.C. 646 (All.).

No orders issued on application for licence.—Whether applicant a licensee—Scope of section 9, Travancore-Cochin General Sales Tax Act (XI of 1125).—*A. M. MATHEW v. THE STATE OF TRAVANCORE-COCHIN AND ANOTHER* [1954] 5 S.T.C. 1 (Trav.-Co.).

Necessity to satisfy requirements of section.—Where the assessee claimed exemption under section 8 as commission agents, but they failed to establish that the goods were sold on behalf of known principals, as some of the principals themselves repudiated the agency of the assessee on their behalf and no particulars were furnished by the assessee to identify the sellers so that the department might proceed against them for the tax: *Held*, that the assessee were not entitled to the exemption under section 8. All the requirements mentioned in section 8 must be satisfied before an assessee can claim exemption under it as commission agent, as the object of the provision is to enable the Government to proceed against the principals. It is only in that event that the commission agent would be exempted from the liability.—*THE CARDAMOM MARKETING CO., LTD. v. THE STATE OF MADRAS* [1954] 5 S.T.C. 446 (Mad.).

Failure to comply with condition of licence—Liability to sales tax.—Where one of the conditions of the licence as required by rule 12 of the Madras General Sales Tax Rules was that the plaintiffs should maintain separate accounts in respect of each class of articles specified in the Act, non-compliance with such a condition disentitled them to the exemption under

section 8 of the Act. The plaintiffs claimed that they were commission agents carrying on business in silver and gold but the defendant contended that they carried on business not as agents of known principals but as regular dealers on their own account. It was found that the plaintiffs placed orders with principals at Bombay on their own account and on their own responsibility but passed on the goods received by them to their customers and charged as price only the amount for which the goods were sent by the Bombay merchants plus the commission to which the plaintiffs were entitled: *Held*, that it could not be said that particular customers of the plaintiffs placed specific orders with the plaintiffs and that the plaintiffs purchased the goods from the Bombay merchants as the agents of their customers and that therefore the plaintiffs came within the definition of "dealer" in the Act. *Radhakrishna v. Province of Madras* [1952] (3 S.T.C. 121) referred to.—*HIRANAND RAMSOOK FIRM v. THE PROVINCE OF MADRAS (Now ANDHRA)* [1954] 5 S.T.C. 361 (Andh.).

Collection of dharmam and dhallal—*Whether violates terms of licence*.—Collection of *dhallal* and *dharmam* by a commission agent with the knowledge of his principals is not a violation of any of the terms of the licence granted to the commission agent under section 8: *Held*, on the facts, that the collection of *dharmam* and *dhallal* was with the knowledge of the principals. *Radhakrishna Rao v. Province of Madras* [1952] (I.L.R. 1952 Mad. 571; 3 S.T.C. 121) followed.—*PARAKKOTAN ALIPPI SAHIB v. THE PROVINCE OF MADRAS* [1953] 4 S.T.C. 384 (Mad.).

Collection of mamul, charity, rusum—*Necessity to prove that they form part of agreed commission*.—Exemption could not be claimed by a commission agent by simply relying on the accounts which showed that some amounts towards *mamul*, charity, *rusum* etc., were collected by him and paid for the purposes mentioned therein. The commission agent could succeed only by adducing reliable evidence and by establishing that the collections and the payment of the *rusums* etc., were part of the agreed commission. He must establish that there was either an agreement between him and the principal to the effect that these *rusums* etc., should be treated as part of the agreed commission, or at any rate, there should be some acceptable evidence to show that there was a custom governing the transactions in question. *Radhakrishna Rao v. Province of Madras* [1952] (I.L.R. 1952 Mad. 571; 3 S.T.C. 121) referred to.—*C. S. NARASIAH AND ANOTHER v. THE PROVINCE OF MADRAS* [1953] 4 S.T.C. 376 (Mad.).

Maintenance of accounts.—The plaintiff sued the Government for refund of sales tax alleged to have been illegally imposed upon him. The trial court found that the plaintiff who had been granted a licence under section 8 of the Madras General Sales Tax Act, for doing commission business, had kept most unsatisfactory accounts and had thus violated the conditions of the licence and held that he was therefore rightly assessed. In view of this finding the trial Judge did not record any finding on the question as to what extent he carried on business as commission agent and on what turnover sales tax had to be exempted. In appeal the Subordinate Judge took the view that business done by the plaintiff as commission agent should be correctly ascertained and remanded the case for a finding on that issue and for disposal of the suit according to law. As regards the accounts the Subordinate Judge without reversing the findings of the trial Judge on that point made certain observations which seemed rather vaguely to indicate that he did not agree with those findings. The State appealed against the order of remand: *Held*, that the remand order was outside the scope of Order XLI, rule 23, of the Civil Procedure Code and one never contemplated by the said provision and should, therefore, be set aside. A court of first appeal may direct remand of a suit disposed of upon a preliminary point, after reversing the decree under appeal, if it considers it necessary in the interests of justice to remand the case and may direct what issue or issues are to be tried. It nowhere contemplates a partial disposal of the appeal by the appellate court, confirming or reversing some findings and then remanding the suit for fresh disposal on other issues.—*PROVINCE OF MADRAS v. REBBAPRAGADA ARJANA RAO* (Appeal against Order No. 611 of 1949; Madras High Court; Mack, J.; February 6, 1953).

Own dealings and agency dealings—*Whether separate accounts were maintained*.—The respondents, a commission agent, filed a suit for recovery of sales tax wrongly collected from him under the provisions of the Madras General Sales Tax Act, 1939. It was contended on behalf of the State that the respondent had not maintained separate accounts of his own dealings and the transactions which he carried on as a commission agent and therefore he was not entitled to claim exemption under section 8. The respondent had maintained separate ledgers in respect of his own business and the commission agency business but the chitta that he was maintaining contained both the dealings. The chitta however showed clearly what transactions related to his

own business and what transactions he carried on as a commission agent. The transactions were separable and identifiable: *Held*, that separate accounts were being maintained by the respondent though noted in a single chitta and that he had not in any way violated the provisions of rule 12(3); *Held further*, that as the respondent had filled the columns containing gross turnover and the net turnover in Form 6 the omission to fill up column 5 in that form was absolutely immaterial. S. A. No. 2268 of 1950 followed. *Hiranand Ramsook Firm v. Province of Madras* [1954] (5 S.T.C. 361) referred to.—*THE STATE OF ANDHRA v. CHODEY JANAKIRAMAYYA AND CO.* [1955] 6 S.T.C. 239 (Andh.).

Sale of flowers, fruits and vegetables—Failure to observe condition regarding maintenance of stock book and issue of cash bills.—The respondents were selling flowers, fruits and vegetables in the Madras markets and they were commission agents within the meaning of section 8 of the Madras General Sales Tax Act, 1939. The respondents received supplies from known principals and, on their behalf sold, early in the morning within the short period of three hours, the fruits, vegetables and flowers received by them in lots as consigned by each principal. It was admitted that all the details necessary to find out the actual quantities of goods received and sold by the respondents could be found in the pattials submitted by them in due course to the disclosed principal. The department accepted the turnover as disclosed by the pattials maintained by the respondents but held that as the respondents maintained no stock book and issued no cash bills for the sales effected by them the conditions of the licence had been violated and they were therefore not entitled to the exemption under section 8. The Appellate Tribunal found that the condition regarding the issue of cash bills was impossible of performance in the case of the respondents: *Held*, (1) that the failure to maintain a stock book did not in any way contravene the conditions of the licence issued to the respondents; (2) that the finding of the Appellate Tribunal regarding the issue of cash bills was binding upon the High Court; (3) that as the condition regarding issue of cash bills was impossible of performance, failure to observe that condition did not disentitle the respondents to the protection afforded by section 8 particularly in view of the fact that there had been a substantial compliance with such of the conditions of the licence as could be fulfilled. *Obiter*—The condition necessitating the issue of cash bills is only directory in its scope and not mandatory and non-observance of such a directory clause no way vitiates the exemption claimed by the commission agents.—*THE STATE OF MADRAS v.*

P. G. GOVINDASWAMY AND CO., AND OTHERS [1954] 5 S.T.C. 103 (Mad.).

Licence under section 8—Scope of exemption.—Under section 8 of the Madras General Sales Tax Act, 1939, the exemption granted to a commission agent to whom a licence had been issued under that section does not extend to all the transactions carried on by him. It is limited to such of his transactions as are carried out in accordance with the terms of the licence issued to him. His claim to immunity from tax is dependent on his fulfilling the conditions of his licence. Where the plaintiff contended that even if he was a dealer in the sense that he sold groundnuts which his principals took to him to be sold through him, he would be still exempt from sales tax by reason of section 2(1) and rule 4(2): *Held*, that the question was not a pure question of law but one of mixed law and fact and as the facts necessary to substantiate the contention did not exist on record, the plaintiff could not succeed.—*SINGARAJANAHALLI KRISTA REDDI v. THE STATE OF MADRAS* [1953] 4 S.T.C. 379 (Mad.).

Items not forming commission agency business included in statement—Whether whole turnover loses benefit of exemption—Collection of *rusum* and *dharmam*—Whether unauthorised.—A commission agent licensed under section 8 of the Madras General Sales Tax Act, 1939, is entitled under law to pledge the goods entrusted to him by the selling principals for sale. The collection of *rusum* and *dharmam* by a commission agent could not be treated as unauthorised or improper in so far as they conform to mercantile usage. *Radhakrishna Rao v. Province of Madras* [1952] (3 S.T.C. 121; (1952) 2 M.L.J. 494) followed. While it is open to the department to disallow items which are included in the commission agency business either because of mistake or because they are not proved to be clearly on behalf of known principals or in respect of which more than an agreed commission is collected, it is not open to them to reject the claim for exemption in respect of the whole turnover merely on the ground that there are such items in the turnover. Under section 8 and the terms and conditions of the licence only the offending transactions can be excluded and such transactions as are clearly proved to have been commission agency transactions are entitled to exemption. The mere fact that the licence is stated to be “subject to the provisions of the said Act and the rules made thereunder” does not mean that such a licence can impose any conditions unrelated to the manner of carrying out the transactions.—*GOLLAPUDI PULLAYYA CO. v. STATE OF ANDHRA (NOW ANDHRA PRADESH)* [1958] 9 S.T.C. 24 (A. P.).

Dharmam and accountancy charges collected from buyers—Whether part of “turnover”—*Failure to include in turnover and in pattials issued to principals—Whether exemption under section 8 can be given.*—A commission agent having control over or possession of the goods and having authority from the owners of the goods to pass the property in and title to the goods is a “dealer” within the definition in section 2(b) of the Madras General Sales Tax Act, 1939. *Dharmam* (charity), *vattar* (subscriptions to a local merchants’ association) and *katha cooly* (accountancy charges) which the assessee, a commission agent licensed under section 8 of the Madras General Sales Tax Act, 1939, collected from buyers of goods as part of the transaction of sale at a fixed percentage of the value of the goods sold would clearly fall within the definition of turnover in section 2(i) of the Act as amended by the Andhra Amendment Act of 1954. The fact that a small part of the payment made by the buyer is not appropriated by the assessee for his commission or by his principals for their own use but is set apart by them for certain specified objects or purposes, does not mean that the payment is gratuitous or dissociated from the sale. In substance, though not in form, the payments must be regarded as part of the consideration for the sale. The failure on the part of the assessee to include them in his turnover and in the pattials issued to the principals constituted a breach of the conditions of section 8 and of the licence and disentitled him to the exemption granted by section 8. The exemption granted by section 8 of the Act is conditional on the assessee showing the entire consideration for the sale of goods in his turnover and his conforming to the conditions of the licence issued to him and a breach of any of these conditions disentitles him altogether to the exemption under section 8. As the assessee in the present case had broken the condition he was not entitled to the exemption and it was not open to him to claim an exemption from tax proportionate to the extent of the amount which he had shown as the consideration for the sale in his turnover and pattials.—**POOSARLA SAMBAMURTHY v. STATE OF ANDHRA** [1956] 7 S.T.C. 652 (Andh.).

Agency business and own business—Separate accounts—Maintenance of separate ledgers—Whether sufficient—Collection of rusum, dharmam and kolagaram and mixing up in accounts agency business and own business—Whether involve violation of terms of licence.—The requirement as to the maintenance of separate accounts is not violated by the commission agent merely because he does not have two separate account books in respect of his

personal business and commission agency business. It is enough if he has maintained separate ledgers. Collections of amounts representing *rusum*, *dharmam* and *kolagaram* by a commission agent cannot be held to involve violation of the terms of the licence inasmuch as they have received the sanction of mercantile usage. The licence granted to a commission agent under section 8 of the Madras General Sales Tax Act, 1939, enables the licensee to seek exemption from tax in respect of only “such of his transactions as are carried out in accordance with the terms and conditions of his licence”, *i.e.*, transactions carried out “for an agreed commission or brokerage on behalf of known principals specified in his accounts” or such transactions “on behalf of principals outside the province”. If from the accounts of the dealer it is possible to separate the transactions of the above nature, then he can claim the exemption. The mere fact that there are other transactions in respect of which no such claim could be made or if made could be sustained cannot be a ground for denying him exemption in respect of transactions of this class. In such a case a tabular statement from the accounts showing the extent of the agency business and own business should be prepared. In the absence of proof of any prejudice to an assessee, he cannot impeach the validity of an order of assessment simply because the terms of the notice issued by the assessing authority are not in strict technical accordance with the language of rule 9 of the Turnover and Assessment Rules.—**KONDAPALLI VIRARAJU v. THE STATE OF ANDHRA (NOW ANDHRA PRADESH)** [1958] 9 S.T.C. 42 (A.P.).

Turnover, whether included in turnover of principal.—Whether a given set of facts constitutes agency or not is one of law, the correctness of which is liable to be canvassed in revision by the High Court. Whether an agent is concerned in the business of the non-resident principal or not within the meaning of section 18 of the Travancore-Cochin General Sales Tax Act, 1125, is a question of fact depending on the circumstances of each case. To be concerned in the business is not necessarily to be authorised to buy or sell. Short of striking the actual bargain which may be done by the principal directly, an agent may do other acts on behalf of the principal, such as paying or receiving the price, storing, preserving or sorting the goods, packing or transporting them, and in that manner, be concerned in his business. There is no warrant on the terms of section 18 for limiting its operation to an agent who does the buying or selling on behalf of the non-resident principal. No exemption can be given to an agent licensed

under section 9 unless he proves that the amounts for which the goods were sold are included in the turnover of the seller or would have been so included but for an exemption applicable to the seller. To lay down that all that need be proved by the agent under the proviso is that the turnover in respect of which exemption is claimed, is part of or is includible or ought to be included in, the principal's turnover, is virtually to deprive the proviso of its content. The word "included" in the proviso must be understood as pointing to some volition of the principal or perhaps of the assessing authorities: *Held*, on the facts of the case, that although the petitioner lacked the authority to buy on behalf of the non-resident buyers, he was an agent residing inside the State and concerned in the business of the non-resident buyers and therefore he was liable under section 18.—*A. I. MANIE v. THE STATE OF KERALA* [1963] 14 S.T.C. 657 (Ker.).

States reorganisation—Principals becoming non-residents—Whether commission agent entitled to exemption or whether liable to be taxed under section 14-A, Madras General Sales Tax Act (9 of 1939).—The respondents were commission agents holding licence under section 8 of the Madras General Sales Tax Act, 1939. After the reorganisation of the States on 1st November, 1956, some of the principals of the respondents became non-resident principals as a result of the transfer of some of the areas in the Madras State to the Kerala and Mysore States under the States Reorganisation Act, 1956. The question was whether for the period 1st November, 1956 to 31st March, 1957, the respondents were liable to be taxed under section 14-A in respect of their turnover of the transactions effected on behalf of their principals residing in those areas or were still entitled to the exemption on account of the licence granted to them under section 8: *Held*, that the provisions of section 8 could not be applied to the respondents and they were liable to be taxed under section 14-A. Decision of the Mysore High Court reversed.—*THE STATE OF MYSORE v. P. B. HUSSAIN KUNHI & Co.* [1967] 19 S.T.C. 215 (S.C.).

Co-operative society holding commission agent's licence—Members selling through society jaggery produced from sugar-cane grown on their own lands at prices higher than fixed under Control Order—Maintenance of two sets of accounts—Society, whether liable to tax for contravening conditions of licence—Whether dealer.—The assessee, a co-operative marketing society registered under the Co-operative Societies Act, held a licence as commission agent under section 8 of the Madras General

Sales Tax Act, 1939. The members of the society, who produced jaggery from the sugar-cane grown by them in their own lands or in their leasehold lands, effected sales of jaggery through the society, which charged a commission on the sale price. Though the price of jaggery was fixed by the Gur Control Order issued by the Government of India, the society used to sell jaggery in open auction at prices higher than those fixed and charge commission from the members on the higher prices. The society maintained two sets of accounts, one a regular account and the other a clandestine account. For the assessment years 1950-51 and 1951-52, the actual turnover computed on the basis of higher prices at which Gur was sold by the society was taxed, on the ground that the society had violated the conditions of the licence issued to it. The society objected to the assessment on the ground that (1) it was not liable to tax on illegal transactions; (2) it was not a dealer; and (3) jaggery, being agricultural produce within the meaning of section 2(i) of the Act, was exempt from tax. The society also relied on certain observations in a judgment of the High Court to support its contention that it was not a "dealer": *Held*, (1) on the facts that the society was a "dealer" and that the transactions were "sales" within the meaning of the Act; (2) that tax is not confined to lawful businesses only; (3) that "jaggery" was not agricultural produce within the meaning of section 2(i); (4) that the High Court had to proceed on the statement of facts by the Tribunal and that recitals in a judgment could not be read as evidence and was not relevant under sections 41 and 42 of the Indian Evidence Act.—*THE ANAKAPALLI CO-OPERATIVE MARKETING SOCIETY, ANAKAPALLI v. THE STATE OF ANDHRA PRADESH* [1966] 18 S.T.C. 328 (A.P.).

Prosecution for non-payment of tax.—The term "dealer" will take in a commission agent in certain cases. He will be an assessee falling within the scope of the Madras General Sales Tax Act, 1939, and can therefore be prosecuted under section 15(b) for non-payment of tax as per the demand notice served on him.—*THE PUBLIC PROSECUTOR v. SARISSETTY VENKATASUBBIAH* [1953] 4 S.T.C. 263 (Mad.).

—For failure to pay the arrears of sales tax, the assessee was charged with an offence punishable under section 15(b) of the Madras General Sales Tax Act, 1939, but the Magistrate acquitted the accused on the ground that he was a commission agent and not a dealer and that accordingly assessments for the years 1948-49 and 1949-50 should not have been levied: *Held*, that the order of acquittal was incorrect and could not be

supported.—**THE PUBLIC PROSECUTOR v. PAVADASETTY MALKAJAPPA** [1953] 4 S.T.C. 269 (Mad.).

Jurisdiction of courts to consider validity of assessment.—If an assessment is made under the provisions of the Mysore Sales Tax Act, 1948, the correctness of the order cannot be questioned in any civil or criminal court. If however the assessment is found to be not made under the Act, there is no bar in section 22 prohibiting civil or criminal courts from considering the correctness of the order. Where vegetables brought to A by the owners are sold by A for them as their agent and he gets only a commission, A is not dealer with the meaning of the word as defined in the Mysore Sales Tax Act, 1948. Where the petitioner was found to be a dealer in vegetables by the Assessing Authority under the Sales Tax Act, if he wanted to challenge that finding, he should do so either by filing an appeal and a revision petition or taking proceeding under section 16. If he failed to do so he could not question the correctness of the order of the Assessing Authority in a prosecution for non-payment of sales tax in accordance with the demand notice. If, however, it was found by the Sales Tax Officer that the petitioner was a commission agent and he was assessed to sales tax it would be open for the civil or criminal courts to consider whether the assessment made in respect of the dealing of the commission agent could be said to be one under the Sales Tax Act or not.—**SUBBAN BEIGH v. GOVERNMENT OF MYSORE** [1953] 4 S.T.C. 108 (Mys.).

Miscellaneous—Burden of proof.—Section 8 of the Madras General Sales Tax Act, 1939, clearly lays the burden on the persons, who claim to be commission agents and not dealers, to prove that they are commission agents and not dealers. If they fail to prove according to the requirements of section 8 that they are commission agents there is nothing preventing them from being held liable to tax as mere dealers.—**M. VELU KONAR AND OTHERS, In re** [1951] 2 S.T.C. 127 (Mad.).

Purchase of goods and subsequent supply to principal—Whether two sales are effected.—A commission agent when he agrees to work for his principal as the latter's agent and to obtain for his principal the goods which the latter wants, undertakes a duty which he has to discharge by purchasing the goods required and supplying them to his principal. The transfer of the goods purchased by him to his customer is an act done in the discharge of his duty as an agent. Such a contract between the principal and the commission agent is not one of sale but of agency and the transfer of property in the goods is not a sale

within the meaning of the Sale of Goods Act, 1930. The assessee, a firm of commission agents, purchased goods and supplied them to their constituents and were paid commission on the goods so supplied. When the assessee purchased the goods, the names of the persons for whom the goods were bought were not disclosed to the sellers, but the assessee's name was entered in their accounts as the purchasers: *Held*, that although the purchase of goods on behalf of the assessee's principal was a sale, the subsequent supply to the principal did not amount to a sale by the assessee to their principal as defined in the Sale of Goods Act.—**PANNA LAL BABU LAL v. COMMISSIONER OF SALES TAX, U.P., LUCKNOW** [1956] 7 S.T.C. 722 (All.).

Firewood suppliers—Whether commission agent.—The respondents, a registered firm carrying on business in firewood, undertook to supply, during the period of rationing of firewood in the City of Madras, such quantity of firewood as the Commissioner of Civil Supplies, Madras, might from time to time require from certain districts. The respondents who were described as the "suppliers" were given exclusive monopoly to transport the firewood from these areas to the City and the firewood was to be supplied at prices which were fixed from time to time by the Government. The respondents transported the firewood from the areas and collected from the dealers to whom the firewood was eventually consigned, the cost of firewood supplied by them, and after retaining a certain sum as their commission, which was fixed by the Government and agreed to by the sellers, paid over the balance to the sellers. The respondents had obtained a licence under section 8 of the Madras General Sales Tax Act, 1939, as commission agents. The department held that the respondents were dealers and were therefore liable to be taxed on their turnover under the Act: *Held*, that the application of section 8 to the respondents depended on the question whether the respondents were buying or selling for an agreed commission on behalf of known principals. If, from the course of dealings, it was clear that the respondents were buying or selling on their own behalf, then they would not be entitled to the benefit of the provisions of section 8. On the facts of the case, the only conclusion that was possible was that the respondents were acting merely as commission agents of the owners of the firewood, who were the known seller-principals, and their dealings therefore came within the meaning of section 8 and they were not liable to pay the tax.—**THE STATE OF MADRAS v. NORTH MADRAS FIREWOOD TRADING Co.** [1953] 4 S.T.C. 39 (Mad.).

Sale of cereals—*Total turnover about 4 lakhs but turnover of each principal below prescribed minimum*—*Commission agent holding licence under section 11*—*Whether should obtain licence under section 6.*—Under the Mysore Sales Tax Act, 1957, if the principal cannot be taxed in respect of a "transaction", his agent also cannot be taxed, because the liability of the agent is co-extensive with that of his principal and under section 11 an agent is taxed *qua* agent and not as a dealer. Section 6 is ancillary and an exception to section 5 and the limit provided under section 5(5) ought to govern the licence fee payable under section 6(2). Therefore if a person is not liable to pay tax under section 5 in respect of his transactions, he cannot be held liable to pay licence fee under section 6(2). The petitioner, a commission agent for resident principals in the State and holding a licence under section 11, sold cereals on behalf of different principals the price of which aggregated to about Rs. 4 lakhs. But the turnover relating to anyone principal did not exceed Rs. 7,500 and none of the principals had obtained the licence under section 6. The Commercial Tax Officer determined the petitioner's turnover at about Rs. 4 lakhs and levied a licence fee of Rs. 660 under section 6: *Held*, that the licence fee imposed on the petitioner under section 6 was without the authority of law.—*H. VEERABHADRAPPA v. COMMISSIONER OF COMMERCIAL TAXES, BANGALORE* [1963] 14 S.T.C. 919 (Mys.).

—See also *IRRI VEERA RAJU's* case [1967] 20 S.T.C. 501 (A.P.) page 277 *supra*.

Person selling goods through commission agent—*Duty to submit return.*—In the Madras General Sales Tax Act, 1939, the word "dealer" is defined as meaning "any person who carries on business of buying or selling goods". The word used is "or" and not "and" and therefore a person will be a dealer within the meaning of the Act who keeps on selling goods even though he does not buy any. A person may directly sell himself or through an employee or through a commission agent. The fact that he sells the goods only through a commission agent is no excuse for not sending the return. He is bound to send the return though perhaps it may be open to him to state that it is a "nil return" by reason of the fact that all the items figure in the return of the commission agent. The duty to send the return whether it is nil or not exists and failure to comply therewith will entail a prosecution for contravention of section 15(a).—*K. T. PAPPANNA ROWTHER, In re* [1953] 4 S.T.C. 292 (Mad.).

Del credere agents—*Supply of coal to mills by colliery through selling and buying agents.*—The respondents, who were the sole sub-agents in a

particular area for the sale of coal of certain collieries, were instructed by K. Co., who were the buying agents of coal for certain mills in that area, to send to the respective mills coal required by them. The coal was despatched from the collieries direct to the mills, but the railway receipts were sent to the respondents together with the bills for the price of coal. The respondents forwarded the receipts together with their own invoices to K. Co., who in their turn forwarded the receipts to the mills with their own invoices. The mills paid the amount of the invoices to K. Co. and this amount came back to the respondents and was paid by them ultimately to the collieries. In this transaction both the respondents and K. Co. charged the mills for their services, each 8 annas per ton. The question was whether there was a sale of coal by the respondents and they were therefore liable to sales tax under the Bombay Sales Tax Act, 1946: *Held*, that having regard to the Colliery Control Order, 1945, the respondents were *del credere* agents for the consignors and therefore the transactions between them and K. Co. or the mills were not transactions of sale within the meaning of the Bombay Sales Tax Act, 1946.—*THE STATE OF BOMBAY v. UNITED COAL Co.* [1958] 9 S.T.C. 19 (Bom.).

—*Supply of coal by colliery to parties through commission agents*—*Whether agents dealers.*—The respondents were commission agents and coal was supplied to parties through the respondents. Under the provisions of the Colliery Control Order, no person could acquire or purchase coal from a colliery except under the authority of the Central Government for which purpose he had to obtain a priority certificate from the State Coal Controller but *del credere* agents were allowed to act and charge a commission of one rupee per ton of coal. K was allotted a priority certificate in respect of some tons of coal and he dealt with a colliery through the respondents. The consignment was in the name of K, but the bill was sent by the colliery to the respondents, who, in their turn, made out a bill in which they charged, in addition to the amount of the bill of the colliery, a sum representing their commission. The liability to pay the colliery rested upon the respondents. The respondents stated that their business was along these lines with other constituents. The Collector of Sales Tax on an application by the respondents under section 27(a), (b) and (c) of the Bombay Sales Tax Act, 1953, held that the respondents were dealers within the meaning of the Act, but the Tribunal on appeal held otherwise. The State of Bombay appealed to the Supreme Court under Article 136 of the Constitution of India: *Held*, (1) that the proper course for the appellant was to exhaust

all its remedies before invoking the jurisdiction of the Supreme Court under Article 136; (2) that the respondents were not dealers inasmuch as they were not carrying on the business of selling coal and that their position was merely that of agents, arranging the sale to a disclosed purchaser, though guaranteeing payment to the colliery on behalf of their principal. Decision of the Sales Tax Tribunal, Bombay, in *Ratilal Vadilal & Bros. v. The State of Bombay* (8 S.T.D. 97) affirmed.—*THE STATE OF BOMBAY (NOW MAHARASHTRA) v. RATILAL VADILAL & BROS.* [1961] 12 S.T.C. 18 (S.C.).

—See also *KARAMCHAND THAPPER AND BROS.* case [1965] 16 S.T.C. 412 (S.C.).

Manufacturing agents or sellers.—The test to decide the question whether the assessee had sold the carpets or had only manufactured them as manufacturing agents on commission basis would be to find out in whom the title to the carpets vested from the time of their manufacture by the weavers to the time when the railway receipts in respect of them were endorsed in favour of purchasers. Sales tax could be charged from the assessee in respect of the carpets only if the carpets had been sold by them and they could be held to have sold the carpets only if the title in the carpets at any stage vested in them and had been transferred by them by the endorsements of the railway receipts.—*RELIANCE CARPET & COMPANY v. COMMISSIONER OF SALES TAX, U.P., LUCKNOW* [1959] 10 S.T.C. 315 (All.).

Whether excise duty paid on goods by principal can be deducted from turnover of agent.—A commission agent assessed as a dealer under the Madras General Sales Tax Act, 1959, in respect of transactions on behalf of his principal is entitled to deduct from the turnover, the excise duty paid on the goods by the principal.—*RAMAKLASHMANA AND COMPANY AND ANOTHER v. THE STATE OF MADRAS* [1968] 21 S.T.C. 35 (Mad.).

Transfer of principal's goods to agent's business and collection of commission on the transaction—Liability of agent to sales tax.—The assessee, a local agent of a non-resident principal and carrying on a business of his own transferred the goods of his principal to his own business and collected commission from his principal on the transaction. The assessee contended that the transaction did not involve any sale inasmuch as the same person could not sell goods to himself: *Held*, that the assessee held two different capacities and when he transferred the goods to himself, he not only acted in that transaction as the agent of his non-resident principal, but also as a purchaser. There was nothing wrong in

this dual capacity coming into play in the transaction which was clearly with the definition of a "sale" in the Madras General Sales Tax Act.—*L. S. CHANDRAMOULI AND COMPANY v. THE STATE OF MADRAS* [1966] 18 S.T.C. 325 (Mad.).

COMMISSIONER

(See also APPEAL, REVISION and REFERENCE.)

Dealer—Application for registration—Section 7(4a), Bengal Finance (Sales Tax) Act, 1941, conferring power on Commissioner to demand reasonable security—Whether *ultra vires* Legislature.—*DURGA PROSAD KHAITAN v. COMMERCIAL TAX OFFICER AND OTHERS* [1957] 8 S.T.C. 105 (Cal.).

Application for registration—Section conferring power on Commissioner to demand reasonable security—Whether constitutionally valid—Bengal Finance (Sales Tax) Act, 1941, as in force in Delhi, Section 8-A.—*NAND LAL RAJ KISHAN v. COMMISSIONER OF SALES TAX, DELHI, AND ANOTHER* [1961] 12 S.T.C. 324 (S.C.).

Dealer—Section 29, Assam Sales Tax Act, conferring power on Commissioner to assess dealers not ordinarily liable to tax and selling goods obtained from outside State—Validity—Whether discriminatory and *ultra vires* Legislature—Scope of section 29 of Act and rule 78 of the Rules.—*BHARAT AUTOMOBILES, GAUHATI v. STATE OF ASSAM* [1957] 8 S.T.C. 537 (Assam).

Delegation—*Whether Commissioner's power under section 11(2), Bengal Act, can be delegated—Notice issued by Commercial Tax Officer under section 11(2)—Validity.*—Where the Commercial Tax Officer issued a notice under section 11(2) of the Bengal Finance (Sales Tax) Act, 1941, read with section 15 and rule 71, but it was contended that as under section 11 the issue of a notice depended upon the Commissioner's satisfaction which must be based upon information which had come into his possession, there could be no proper delegation of the Commissioner's power under that section and therefore the notice issued by the Commercial Tax Officer was invalid: *Held*, that the Commercial Tax Officer derived both power and jurisdiction by virtue of the delegation and that it was he who had to be satisfied and such satisfaction was to be grounded upon information which had come into his possession and therefore the notice issued by the Commercial Tax Officer under section 11(2) was valid. The proper way of interpreting the Act and the Rules was that the Commissioner had a right to delegate and once he had delegated the power, the name of the delegatee should be substituted for that of the Commissioner.—*BALIHARI COLLIERY*

Co., LTD. *v.* COMMERCIAL TAX OFFICER AND ANOTHER [1957] 8 S.T.C. 194 (Cal.).

—*Assessment and imposition of penalty—Amendment of section after delegation of power by Commissioner—Whether fresh delegation necessary—Bengal Finance (Sales Tax) Act (6 of 1941), Sec. 11(4B)—Bengal Sales Tax Rules, 1941, Rule 71.*—The petitioner was assessed to sales tax and was also asked by a notice to show cause why penalty should not be imposed under section 11(4B) of the Bengal Finance (Sales Tax) Act, 1941, by the Commercial Tax Officer. The petitioner thereupon filed a petition and contended that section 11(4B) was incorporated in the Act long after the notification dated 14th June, 1954, delegating the powers by the Commissioner of Commercial Taxes to the Commercial Tax Officer and unless there was a fresh delegation of powers under section 11(4B) no assessment or imposition of penalty under that section could be made by the Commercial Tax Officer: *Held*, that by the notification dated 14th June, 1954, there was a general delegation of the power to assess and to impose a penalty under section 11 and there need not be a fresh delegation every time an amendment was made to that section. The assessment of tax or penalty by the Commercial Tax Officer was covered by the original delegation and was therefore valid; *Held further*, that the element of duty in the section was only an adjunct to the exercise of the power and could be validly delegated. *Daluram Pannalal Modi v. Assistant Commissioner of Sales Tax, Indore, and Others* [1963] 14 S.T.C. 675 and *Kishan Chand Arora v. Assistant Commissioner, Commercial Taxes, Calcutta* (Civil Rules Nos. 3168 to 3170 of 1960) followed. —*HIND ASSOCIATED CORPORATION PRIVATE LTD. v. STATE OF WEST BENGAL AND OTHERS* [1966] 17 S.T.C. 414 (Cal.).

—*Duty to satisfy about escapement of turnover and power to reassess—Whether both can be delegated—Validity of reassessment made by Assistant Commissioner.*—See *DALURAM PANNALAL MODI v. ASSISTANT COMMISSIONER OF SALES TAX, INDORE* [1962] 13 S.T.C. 759 (M.P.) affirmed by the Supreme Court in [1963] 14 S.T.C. 675.

Nature of power under section 21, Punjab General Sales Tax Act—Whether section 11-A limits his powers under section 21.—See *NARAIN SINGH MOHINDER SINGH v. THE STATE OF PUNJAB* [1963] 14 S.T.C. 610 (Punj.); *SHRI OM PARKASH SETH v. THE ASSESSING AUTHORITY, AMRITSAR, AND ANOTHER* [1964] 15 S.T.C. 530 (Punj.) and *NATIONAL RAYON CORPORATION LIMITED v. THE ADDITIONAL ASSISTANT EXCISE AND TAXATION COMMISSIONER, PUNJAB* [1964] 15 S.T.C. 746 (Punj.).

Order under section 19, C. P. and Berar Sales Tax Act—Nature of order.—Under section 19 the Commissioner had to act *quasi* judicially and his determination that a person is not a dealer is binding on the Sales Tax Officer.—*NIMAR COTTON PRESS, KHANDWA v. THE SALES TAX OFFICER, KHANDWA* [1954] 5 S.T.C. 428 (Nag.).

Order of Commissioner without giving hearing to assessee directing Assistant Commissioner to re-examine assessment—Whether judicial or administrative order.—The petitioners were assessed by the Assistant Commissioner of Sales Tax for a particular quarter. They appealed to the Sales Tax Commissioner but later withdrew the appeal. Subsequently the petitioners received a notice from the Assistant Commissioner stating that he had been directed by the Sales Tax Commissioner to re-examine the assessment and called upon the petitioners to produce for the inspection of the Assistant Commissioner all accounts and other documents for the same quarter: *Held*, that the order of the Commissioner must be treated to be a judicial order; if it is to be treated as an administrative order then there was no power in the Commissioner or in the Assistant Commissioner to require the petitioners to produce their account books and other documents. As the order was passed by the Commissioner without hearing the petitioners the proceedings commenced by the Assistant Commissioner at the instance of the Commissioner were without jurisdiction and that consequently the petitioners were not bound to comply with the notice served upon them by the Assistant Commissioner. [It would be open to the Commissioner to issue a notice to the petitioners under section 22(7) and, after hearing them, to decide whether the case called for the reopening of the assessment already made.] The power of the Commissioner, and consequently also of the Assistant Commissioner, to require any person to produce for his inspection the documents referred to in section 15(1) is exercisable only when it is necessary to inspect those documents "for the purposes of this Act". What section 22(5) contemplates is the exercise of a judicial power by the Commissioner and subsection (7) of section 22 makes it clear that that power cannot be exercised without hearing the person likely to be affected.—*VRAJLAL MANILAL AND CO. v. COMMISSIONER OF SALES TAX, MADHYA PRADESH* [1952] 3 S.T.C. 333 (Nag.).

Order under section 19—Whether appeal lies.—The expression "otherwise than in a proceeding before a Court" can only mean "otherwise than in judicial or *quasi* judicial proceedings". An appeal is a judicial process and cannot be available in respect of proceedings which are not

judicial and not even *quasi* judicial. Consequently no appeal lies against an order passed by the Sales Tax Commissioner in proceedings before him under section 19 of the C.P. and Berar Sales Tax Act, 1947.—D. M. RANADE AND ANOTHER *v.* THE STATE [1952] 3 S.T.C. 112.

Order refusing exemption of cottage and home industries—Whether appealable.—See KISANLAL RADHAKISAN *v.* THE STATE OF MADHYA PRADESH [1952] 3 S.T.C. 336.

—See also APPEAL.

Registration as dealer—Order of Commissioner refusing to cancel registration certificate—Whether judicial order.—The petitioner, registered as a dealer under the C.P. and Berar Sales Tax Act, 1947, made an application to the Sales Tax Officer for the cancellation of the registration certificate. The officer in his report held that the petitioner was not liable to registration and made some recommendation. The Commissioner did not accept this recommendation and held that the petitioner was a commission agent inasmuch as it was required to pay the price if the buyer did not pay it and therefore the petitioner was covered by the definition of "dealer" in section 2(c): *Held*, that the decision of the Commissioner was a judicial order under section 8A(5) of the Act.—C. P. COAL TRADING AND DISTRIBUTING CO. *v.* COMMISSIONER OF SALES TAX, MADHYA PRADESH AND ANOTHER [1954] 5 S.T.C. 208 (Nag.).

Order upheld by Board of Revenue—Whether can be reviewed.—An order of the Commissioner of Sales Tax declining to review his own order which had been upheld in appeal by the Board of Revenue is legal and valid.—PURUSHOTTAM SITARAM TIKLE *v.* THE STATE [1952] 3 S.T.C. 328.

Power of revision—Suo motu revision—Preliminary objections involving questions of law should be first decided before hearing revision on merits.—See RAJAB ALI FARISHTA *v.* COMMISSIONER OF SALES TAX [1963] 14 S.T.C. 574 (M.P.).

Scope of power of Commissioner—Whether can consider whole case.—See GHANSHYAMDAS *v.* SALES TAX OFFICER, DURG, M.P. [1964] 15 S.T.C. 128 (M.P.).

Power to consider correctness and justness of orders of subordinate authorities.—See B. SANJEEVA RAO *v.* COMMISSIONER OF COMMERCIAL TAXES IN MYSORE, BANGALORE [1963] 14 S.T.C. 267 (Mys.).

Power of revision under section 22B, C.P. and Berar Act—Orders passed in appeal—Whether can be revised.—See COMMISSIONER OF

SALES TAX, MADHYA PRADESH, INDORE *v.* SHRI AMARJEET SINGH [1963] 14 S.T.C. 501 (M.P.).

Power to review order of predecessor.—Under section 22(6) of the Central Provinces and Berar Sales Tax Act, 1947, it is competent for the Sales Tax Commissioner to review an order passed by his predecessor-in-office.—R. S. REKHCHAND MOHTA *v.* THE STATE [1952] 3 S.T.C. 55.

Power of Commissioner to determine disputes (Bengal)—Effect of repeal of section.—The effect of repeal of section 18 of the Bengal Finance (Sales Tax) Act, 1941 (relating to power of Commissioner to determine disputes) by Ordinance X of 1950 has been to enlarge the power of the Commercial Tax Officer under rule 71 of the Sales Tax Rules and he is competent to deal with the question of a person being a dealer or not when an application for registration as a dealer is made before him.—STAYNOR & CO. *v.* COMMERCIAL TAX OFFICER [1951] 2 S.T.C. 111 (Cal.).

Power of Commissioner to determine disputes (Bihar)—Determination, whether an order and revision lies to Board.—The power of the Commissioner under section 21 of the Bihar Sales Tax Act, 1947, to determine a question is a power of a judicial or a *quasi* judicial character and the determination of the Commissioner under that section is an order which the Board of Revenue is competent to revise under section 24(4) of the Act read with rule 36(5)(a) of the Rules made under the Act.—S. C. COONDOO & CO. *v.* THE STATE OF BIHAR [1957] 8 S.T.C. 650 (Pat.).

COMPANY

Arrears of sales tax due by company—Whether directors personally liable.—See DESIRAJU VENKATAKRISHNA SARMA, *In re* [1954] 5 S.T.C. 448 (Andh.).

—Whether managing director can be arrested.—See SURINDER NATH KHOSLA *v.* EXCISE AND TAXATION COMMISSIONER, PUNJAB [1964] 15 S.T.C. 838 (Punj.).

Arrears of sales tax—Recovery of tax from company in liquidation.—See under ARREARS OF SALES TAX.

Assessment on company—Proceedings for recovery from shareholders—Legality.—See L. PARAMESWARI DAS *v.* THE COLLECTOR OF BULANDSHAHR [1955] 6 S.T.C. 399 (All.).

Company carrying on business in contravention of section—Shareholder's liability.—If a limited company carries on business in contravention of section 7(1) of the Bengal Finance (Sales Tax) Act, 1941, the authorities can start proceedings under section 22(1)(a) against the company alone

and not against any of its shareholders.—**RAMESWAR AGARWALLA v. THE STATE AND ANOTHER** [1955] 6 S.T.C. 397 (Cal.).

Sales to registered dealer—Goods manufactured by company distributed by subsidiary company on commission basis—Moneys remitted to parent company by subsidiary company on realisation—Subsidiary company unregistered for portion of that period—Transfer of goods to subsidiary company—Whether sale.—**STANDARD PHARMACEUTICAL WORKS LTD. v. MEMBER, BOARD OF REVENUE, WEST BENGAL** [1954] 5 S.T.C. 327 (Cal.).

Winding up—*When sales tax becomes due.*—Section 530(1) of the Companies Act, 1956, provides: "In a winding up, there shall be paid in priority to all other debts—(a) all revenues, taxes, cesses and rates due from the company to the Central or a State Government or to a local authority at the relevant date as defined in clause (c) of sub-section (8), and having become due and payable within the twelve months next before that date." Under sub-section (8)(c) of section 530 "the relevant date" is the date of appointment of a provisional liquidator where such a liquidator is appointed: *Held*, (1) that under the section a claim by a State Government representing sales tax has to be paid in priority to other debts if—(a) the claim was due on the relevant date, and (b) the claim became "due and payable" within a period of twelve months next before the relevant date; (2) that under the Bihar Sales Tax Act, 1947, sales tax becomes due for each transaction of sale immediately after the sale is effected and to the extent of the liability admitted in a return the amount of tax is payable before the dealer submits that return; but until a final assessment order has been passed declaring the amount that a dealer must pay as tax in excess of the liability admitted by him in his return that amount cannot be said to be ascertained, and it becomes legally recoverable only when a notice is issued as provided in section 14(4); (3) that section 530(1)(a) of the Companies Act, 1956, does not require that a claim must become due as well as payable within the period of twelve months and that its requirements are satisfied if the co-existence of both occurs for the first time within that period; (4) that therefore where a certain amount representing sales tax for three years was due before the period of twelve months, but it first became payable only within that period, the amount ought to be paid in priority to ordinary debts under section 530(1)(a).—*In the matter of BIHAR BOLTS AND RIVETS AND ENGINEERING WORKS LTD. (IN LIQUIDATION)* [1959] 10 S.T.C. 578 (Pat.).

Whether citizen—*Whether entitled to fundamental rights.*—The word "citizen" in Article 19 of the Constitution is confined to natural persons and not to juristic persons like companies registered under the Indian Companies Act. Such companies, not being "citizens", cannot ask for the enforcement of fundamental rights guaranteed by Article 19.—**SWADESHI COTTON MILLS COMPANY LTD. v. SALES TAX OFFICER** [1964] 15 S.T.C. 505 (All.).

Whether company liable to pay tax on turnover of depots.—The assessee-company carrying on the business of manufacturing and selling cotton cloth transferred to its retail depots, goods worth about Rs. 45 lakhs and the retail depots sold the goods to consumers at about Rs. 46 lakhs. Under the Sales Tax Act the tax payable on cotton cloth and yarn was at single point and payable by the manufacturer. Under the U.P. Controlled Cotton Cloth and Yarn Dealers' Licensing Order, 1948, a mill manufacturing cloth was not in a position to sell directly to the retail dealers, but the assessee, being an uneconomic mill was allowed to sell the goods through its retail depots. The question was whether the assessee was liable to sales tax on the turnover of the depots (Rs. 46 lakhs) or on its own turnover (Rs. 45 lakhs): *Held*, that sales tax could only be charged on the turnover of the assessee and not on the turnover of the depots. Even assuming that the assessee and the depots were one, it was open to a person to carry on different businesses. He could act as a manufacturer, a wholesale dealer and a retailer, and when acting in different capacities he would be liable to taxes in different capacities. When the goods had been transferred by the assessee to the depot, the function of the assessee as manufacturer had ceased and, thereafter, it was the function of a wholesale dealer that it was performing.—**VIKRAM COTTON MILLS, LUCKNOW v. COMMISSIONER OF SALES TAX, U.P.** [1960] 11 S.T.C. 120 (All.).

COMPOSITION

Appeal—*Order fixing amount of composition under Sec. 26, Bombay Act*—*Whether appeal or revision lies*—*Procedure to be followed before fixing composition money or launching prosecution*—*Maximum penalty, when can be awarded*—*Prosecutions under section 24 when to be initiated*—*Sales Tax Officer consulting superior officer before passing order*—*Propriety.*—*Held*, (1) that no appeal or revision lay against an order of the Deputy Commissioner fixing the amount of composition under section 26 of the Bombay Sales Tax Act. The correct procedure under section 26 would be to ask the assessee to make his proposal in the matter and the Deputy Commissioner to accept it. If the

latter wants the composition money to be increased he can make the counter-offer and leave it to the assessee to comply with his demand or face a prosecution. *Obiter*.—Sections 24 to 26 of the Act contain penal provisions intended to prevent evasion of the payment of sales tax; and whatever name be given to the amount imposed by the Collector of Sales Tax under section 26, it is in its nature a penalty. It is therefore necessary that before deciding on a prosecution or fixing the amount of money to be demanded as the price of dropping it, the Collector should give the party concerned an opportunity of being heard, which would minimise complaints and help the Collector to fix reasonable amounts by way of composition. Such matters should not be decided merely on the report of the Sales Tax Officers as routine matters. The maximum penalties should be reserved for exceptionally bad cases. It would be better if questions of prosecutions under section 24 are considered only after the assessment proceedings out of which they arise are completed which will give the Collector a clear picture before he decides upon proceeding under sections 24 to 26. The Sales Tax Officers ought to exercise their independent judgment in the cases they decide and not consult the higher officers so as to render the provisions as regards appeal and revision nugatory and superfluous.—*FIDA ALI SHAIKH ALI DHARMAJWALA v. THE STATE OF BOMBAY* [1952] 3 S.T.C. 58; 1 S.T.D. 61.

Appeal—Order under section 16, Madras Act, accepting certain amount by way of composition of offence—Whether appealable—Nature of proceeding under section 16.—The closing of a case by composition under section 16 of the Madras General Sales Tax Act, 1939, against a dealer who has rendered himself liable to prosecution for violating the mandatory provisions of the Act is a proceeding recorded by the prescribed authority within the meaning of section 11 of the Act, as amended by the Madras General Sales Tax (Andhra Amendment) Act, 1954, and an appeal would therefore lie against an order of composition under section 16.—*THE STATE OF ANDHRA (NOW ANDHRA PRADESH) v. BELLAMKONDA VENKATA SUBBAIAH AND ANOTHER* [1957] 8 S.T.C. 309 (A.P.).

Appeal.—Letter offering to drop criminal proceedings if amount by way of composition is paid—Whether an order under section 21, Bombay Sales Tax Act—Appeal to Tribunal—Maintainability.—*GURUMUKHDAS SALAMATRAI v. THE STATE OF BOMBAY* [1952] 3 S.T.C. 99 (T.D.).

Composition, meaning of—Registration—Default in payment of annual fee—Demand of penalty for

non-payment of fee—Legality.—Composition is a bilateral act as a result of agreement between two parties and the State cannot impose a penalty upon a defaulter and collect the amount due as on composition when the defaulter is not a party to the arrangement. The only course open to the State if the defaulting party does not agree to the composition proposed is to resort to the Magistrate's Court and get an order of conviction leading to its attendant consequences. Consequently the demand from the petitioners, who were registered under the Act, for payment of the defaulted annual fee and also a further amount by way of penalty for such non-payment would not be proper. The liability to pay the fee is an obligation arising out of the subsistence of the registration and does not depend upon the liability to register.—*HOPKINS AND WILLIAMS (TRAVANCORE) LIMITED v. AGRICULTURAL INCOME-TAX AND RURAL SALES TAX OFFICER AND ANOTHER* [1954] 5 S.T.C. 2 (Trav.-Co.).

—*When composition within section 31, Mysore Act, will be complete—"Accept", meaning of—Composition money—Failure to pay—Whether can be recovered under section 13(3), Mysore Sales Tax Act, 1957.*—A composition within the meaning of section 31 of the Mysore Sales Tax Act, 1957, will be complete when the prescribed authority and the dealer have agreed that a certain sum of money if paid by the dealer will be regarded by the prescribed authority as a payment by way of composition. At that point of time, the prescribed authority must be held to have accepted the said sum of money by way of composition of the offence and the same immediately operates as an acquittal of the dealer in respect of the offences committed or reasonably regarded as having been committed by him in respect of which the said sum of money is fixed as composition amount. As at that point of time there is an agreement between the authority on behalf of the State and the dealer, binding on both of them, it is enforceable by each of them against the other. The dealer can resist any attempt on the part of the department to prosecute him. The department can enforce payment of the composition amount by the dealer. The composition amount in such circumstances becomes an amount due under the Act from the dealer, because it is an amount which by reason of the relevant provisions of the Act and the exercise of the power thereunder he becomes liable to pay. It can therefore rightly be recovered by taking action under section 13(3) of the Act. The word "accept" in section 31 does not amount to actual physical receipt of the money. Compounding of an offence or composition of an offence otherwise

than by regular punishment is a matter of agreement between the offender and the aggrieved party which the law permits them to arrive at in substitution of actual imposition of the punishment prescribed by law.—**T. NANJAPPA & SONS v. ASSISTANT COMMISSIONER OF COMMERCIAL TAXES, MYSORE DIVISION, MYSORE, AND ANOTHER** [1968] 22 S.T.C. 277 (Mys.).

Composition fee in lieu of sales tax—Whether application for composition can be made after completion of assessment.—Upon the language of section 7-E of the U.P. Sales Tax Act, 1948, an assessee could not seek permission to pay a sum by way of composition after assessment proceedings for the period had been completed. The State Government had the power under section 7-E to require a dealer to make an application for composition and had also the authority to prescribe a period for making such application. The period for making the application specifically mentioned in the Notification No. ST. 349/X dated 28th January, 1958, was neither unreasonable nor arbitrary. The provisions of the notification were therefore not *ultra vires*. Sales tax becomes payable when liability to pay tax arises, and liability to pay tax arises by the happening of the taxable event. The taxable event under the U.P. Sales Tax Act, 1948, is the sale of goods or their supply or distribution by way of sale. It is not necessary to wait till the assessment has been completed in order to be able to say that a tax has become payable. There is a distinction between the expressions "tax payable" and "tax due". Tax is due when it becomes a debt owed to the taxing State; it becomes a debt when it has been determined by assessment and quantified, and a notice of demand has been issued intimating the amount of tax and demanding payment.—**M. A. & COMPANY v. ASSISTANT COMMISSIONER (JUDICIAL) SALES TAX, FARRUKHABAD, AND ANOTHER** [1964] 15 S.T.C. 487 (All.).

Failure to file return before due date.—Notice fixing compounding fee under section 46(1)(a), Madras General Sales Tax Act, 1959, far in excess of Rs. 1,000—**Legality**—Appropriate provision to be applied.—**RAJASTHAN INVESTMENT CORPORATION v. DEPUTY COMMERCIAL TAX OFFICER, T. NAGAR DIVISION, MADRAS** [1968] 21 S.T.C. 500 (Mad.).

Failure to issue cash bill—Offence—Levy of composition fee—Legality.—The levy of a composition fee under section 31 of the Mysore Sales Tax Act, 1957, is possible for the omission to issue a bill or cash memorandum as required by section 27(1).—**K. N. KRISHNASWAMY v.**

COMMERCIAL TAX OFFICER, CHIKMAGALUR, AND ANOTHER [1967] 20 S.T.C. 239 (Mys.).

Levy of compounding fee—When bars prosecution for same offence.—The levy of a compounding fee under section 16 of the Madras General Sales Tax Act, 1939, for an offence under section 15 is a bar for the prosecution of that offence, if the offer to compound the offence has been accepted by the party and the transaction has been completed by him by payment of the stipulated amount.—**KANDASWAMI GOUNDAN AND ANOTHER, In re** [1958] 9 S.T.C. 542 (Mad.).

Nature of order under section 16, Madras Act, directing assessee to pay certain amount by way of composition of offence.—There is no provision in the Madras General Sales Tax Act, 1939, which empowers the Deputy Commercial Tax Officer to pass an order under section 16 of the Act stating that an assessee guilty of an offence should pay a particular sum by way of composition. The only authority vested in him under that section is to accept by way of composition of any offence a sum of money not exceeding a particular sum. An order under that section directing the assessee to pay a specified sum would be absolutely ineffective. A guilty assessee might offer to pay a sum and the officer might forbear for the time being from launching a prosecution; but the officer cannot insist upon the assessee paying the sum so offered. It is always open to the authorities to prosecute the offender. There can be no agreement to compound between the officer and the offender under the section. It only provides for actual compounding and does not create any contractual relationship. *State of Andhra (Now Andhra Pradesh) v. Bellamkonda Venkata Subbarah* [1957] (8 S.T.C. 309) relied on.—**INEEPAKOLLA GANIRAJU v. STATE OF ANDHRA (NOW ANDHRA PRADESH)** [1959] 10 S.T.C. 108 (A.P.).

Registration—Sales by registered dealer to dealer who did not apply for registration within time but obtained registration certificate by compounding offence—**Whether exempt.**—**HIRJI GOVINDJI v. COMMISSIONER OF SALES TAX, MADHYA PRADESH, NAGPUR** [1955] 6 S.T.C. 370 (Nag.).

—**Failure to register—Effect of composition of offence.**—See **DAURAM v. STATE OF MADHYA PRADESH** [1962] 13 S.T.C. 562 (M.P.).

—**Carrying on business without registration certificate—Composition of offence under section 11(1), Bombay Sales Tax Act, 1953—Effect.**—**COLLECTOR OF SALES TAX, BOMBAY STATE v. JAMNADAS DHARUMAL** [1962] 13 S.T.C. 537 (Mah.).

—**Using declaration forms for purchase not covered by registration certificate—Composition**

of offence and validation of declaration forms by Commissioner—Review by successor-in-office declaring predecessor's order void—Legality—Bengal Finance (Sales Tax) Act (6 of 1941), Secs. 5, 7, 20, 22, 23.—AKSHOY KUMAR DEY AND CO. *v.* COMMERCIAL TAX OFFICER AND OTHERS [1966] 18 S.T.C. 505 (Cal.).

Revision—*Notice by way of composition—Whether revision lies to Deputy Commissioner or Board of Revenue.*—A revision lies to the Deputy Commissioner under section 33 of the Madras General Sales Tax Act, 1959, or to the Board of Revenue under section 35 against a notice by way of composition under section 46 inasmuch as the issuing of such a notice is a proceeding recorded under the Act.—K. J. LINGAN AND OTHERS *v.* JOINT COMMERCIAL TAX OFFICER, MOUNT ROAD DIVISION, MADRAS, AND OTHERS [1967] 19 S.T.C. 349 (Mad.).

CONSTITUTION OF INDIA

[See also DELEGATED LEGISLATION, DISCRIMINATORY LEGISLATION and WRITS UNDER CONSTITUTION.]

1. Legislative Powers.
2. Restrictions under Constitution.
3. Miscellaneous.

Legislative Powers

Taxes on the sale of goods and excise duty.—Section 100 (1) of the Government of India Act, 1935, provided that the Federal Legislature had, notwithstanding anything in sub-sections (2) and (3) of the said section, and a Provincial Legislature had not, power to make laws with respect to any of the matters enumerated in the Federal Legislative List. Entry 45 of that List was as follows:—"Duties of excise on tobacco and other goods manufactured or produced in India." Section 100 (3) provided that subject to the two preceding sub-sections a Provincial Legislature had, and the Federal Legislature had not, power to make laws for a Province or any part thereof with respect to any of the matters enumerated in the Provincial Legislative List. Entry 48 of that List was as follows: "Taxes on the sale of goods and on advertisements." The Legislature of the Central Provinces and Berar passed an Act entitled the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938, which provided that "there shall be levied and collected from every retail dealer a tax on the retail sales of motor spirit and lubricants at the rate of five per cent. on the value of such sales": *Held*, on a reference by the Governor-General under section 213 of the Government of India Act, 1935, that the Central Provinces and Berar Sales of

Motor Spirit and Lubricants Taxation Act, 1938, was not *ultra vires* the Legislature of the Central Provinces and Berar. Gwyer, C.J.—The power to make laws with respect to duties of excise given by the Government of India Act, 1935, to the Federal Legislature is to be construed as a power to impose duties of excise upon the manufacturer or producer of the excisable articles, or at least at the stage of, or in connection with, manufacture or production and it extends no further. The question is one of possible limitations on a legislative power and not possible limitations on the meaning of the expression "duties of excise". Sulaiman, J.—Tax on retail sales to the consumers is in pith and substance not an excise duty. Jayakar, J.—As regards goods centrally excisable, taxes on their sale within the Province for purposes of consumption, when such taxes are in no way connected with their production, manufacture, etc., within the Province, but are imposed on their sale in the Province merely as existing articles of trade and commerce, should be exclusively within the competence of the Provincial Legislature. Save as aforesaid, all duties of excise on those goods, whether levied and collected at the stage of manufacture, production or any subsequent stage up to consumption (exclusive of sale in the Province, as stated above), should remain exclusively within the competence of the Centre.—*In the matter of THE CENTRAL PROVINCES AND BERAR SALES OF MOTOR SPIRIT AND LUBRICANTS TAXATION ACT, 1938* [1938] 1 S.T.C. 1 (F.C.).

Tax on first sales.—Under the Government of India Act, 1935, the Federal Legislature had an exclusive power (List I, entry No. 45) to impose duties of excise, and the Provincial Legislature an exclusive power (List II, entry No. 48) to impose taxes on the sale of goods. The Province of Madras passed the Madras General Sales Tax Act, 1939, which provided that every person carrying on the business of buying and selling goods shall be liable to pay in each year a tax on his turnover: *Held*, that the power of the Provincial Legislatures under the Government of India Act to levy a tax on the sale of goods extends to sales of every kind including first sales, *i.e.*, sales by the manufacturer or producer, and the impugned Madras Act was not *ultra vires* in so far as it purported to levy a tax on such sales. Where a turnover tax is leviable at a specified rate on the aggregate sum produced by the sale of a number of different articles or commodities, it is a tax levied at the specified rate on each sale of those goods and commodities. The expression "duty of excise" is wide enough to include a

tax on sales but where power is expressly given to another authority to levy a tax on sales, "duty of excise" must be given a more restricted meaning than it might otherwise bear. A tax levied on the first sale of goods must in the nature of things be a tax on the sale by the manufacturer or producer, but it is levied upon him *qua* seller and not *qua* manufacturer or producer. If a taxpayer who pays a sales tax is also a manufacturer or producer of commodities subject to a central duty of excise he may have to pay two taxes, but the two taxes are economically separate and distinct imposts. It is natural when considering the ambit of an express power in relation to an unspecified residuary power, to give a broad interpretation to the former at the expense of the latter but where, as in the Indian Constitution Act, there are two complementary powers each expressed in precise and definite terms there can be no reason for giving broader interpretation to one power rather than to the other. The American and Australian decisions should not therefore be blindly adopted in India. [1941] (1 S.T.C. 106) reversed.—*THE PROVINCE OF MADRAS v. BODDU PAIDANNA AND SONS* [1942] 1 S.T.C. 104 (F.C.).

—The Governor-General in Council instituted a suit against the province of Madras for a declaration that the Madras General Sales Tax Act (IX of 1939) which imposed a tax on the sale of goods within the Province of Madras was *ultra vires* the Madras Legislature: *Held*, that in view of the decision of the Federal Court in *The Province of Madras v. Boddu Paidanna and Sons* [1942] (1 S.T.C. 104) that the Act was within the competence of the Madras Legislature, the suit must be dismissed with costs.—*GOVERNOR-GENERAL IN COUNCIL v. THE PROVINCE OF MADRAS* [1943] 1 S.T.C. 128 (F.C.).

—The real nature, the "pith and substance" of the Madras General Sales Tax Act (IX of 1939) is that it imposes a tax on the sale of goods. The tax imposed by the Act is not a duty of excise in the cloak of a tax on sales. It lacks the characteristic features of a duty of excise such as uniformity of incidence and discrimination in subject-matter; it is in its general scope and in its detailed provisions a "tax on sales". It is in fact a tax which falls precisely within entry No. 48 of List II (Provincial Legislative List) of Schedule VII of the Government of India Act, 1935. The competing entries No. 45 of the Federal Legislative List (List I) and No. 48 of the Provincial Legislative List (List II) may fairly be reconciled. Consequently the Madras General

Sales Tax Act (IX of 1939) is *intra vires* the Provincial Legislature even in so far as it levies a tax on first sales in Madras of goods manufactured or produced in India. A duty of excise is primarily a duty levied upon a manufacturer or producer in respect of the commodity manufactured or produced. It is a tax upon goods not upon sales or the proceeds of sale of goods. The two taxes, the one levied upon a manufacturer in respect of his goods, the other upon a vendor in respect of his sales, may, in one sense overlap. But in law there is no overlapping. The taxes are separate and distinct imposts. If in fact they overlap, that may be because the taxing authority imposing a duty of excise, finds it convenient to impose that duty at the moment when the excisable article leaves the factory or workshop for the first time upon the occasion of its sale. But that method of collecting the tax is an accident of administration; it is not of the essence of the duty of excise which is attracted by the manufacture itself.—*THE GOVERNOR-GENERAL IN COUNCIL v. THE PROVINCE OF MADRAS* [1945] 1 S.T.C. 135 (P. C.).

—The power of a Provincial Legislature to levy a tax on the sales of goods extends to sales of every kind, whether first sale by the manufacturer or producer or not, and a tax levied on the first sale by the manufacturer or producer is levied on him *qua* seller and not *qua* manufacturer or producer. Such a tax is not outside the scope of the Bihar Sales Tax Act. A tax on the sale of goods immediately after their manufacture is not necessarily in the nature of excise duty.—*TOBACCO MANUFACTURERS (INDIA) LTD. v. THE STATE OF BIHAR* [1950] 1 S.T.C. 282 (Pat.).

—There is no prohibition in the Constitution against the imposition at one and the same time of an excise tax and a tax on sales by the Legislature.—*SHIVA DAYAL JAISWAL v. SALES TAX COMMISSIONER, U.P., LUCKNOW* [1951] 2 S.T.C. 192 (All.).

—The State Government is empowered to levy sales tax on tobacco notwithstanding the fact that excise duty upon tobacco has been levied by the Central Government. Neither the Government of India Act, 1935, nor the Constitution of India, 1950, is a bar to the levy of sales tax on tobacco by the Government of the State of Assam.—*RAMANANDA JOY KISSEN v. COMMISSIONER OF TAXES (SALES), ASSAM* [1951] 2 S.T.C. 11 (Assam).

Tax on purchases made by manufacturer.—The tax imposed by the Madras General Sales Tax and the Madras Tobacco (Taxation of Sales and Registration) (Amendment) Act (XIII of 1955) is

a tax on the sale of goods and not an excise duty. The Act is therefore valid and is not *ultra vires* the Madras Legislature. There is no distinction between a tax imposed on a producer on the first sale of goods effected after manufacture and a tax on purchase by a producer before manufacturing operations start. Both are taxes on the sale of goods and not on production. A duty of excise is under the Constitution of India a duty on production levied on a producer and grounded on the fact of production, while a sales tax is a tax levied on a dealer on the occasion of sale. The amendments introduced into the Madras General Sales Tax Act by Amending Act XIII of 1955 did not offend Article 14 of the Constitution by introducing an unreasonable discrimination between different classes of manufacturers.—*RAMRAJ TOBACCO TRADING COMPANY v. THE ASSISTANT COMMERCIAL TAX OFFICER, ATTUR, AND OTHERS* [1957] 8 S.T.C. 127 (Mad.).

—The purchase tax imposed on certain manufacturers by enacting the East Punjab General Sales Tax (Amendment) Act, 1958, is not a duty of excise on goods manufactured or produced and it is not *ultra vires* the Legislature. The base on which the tax operates is not the manufacture but the commercial transaction of sale and purchase of the commodity which has to be used in future in a manufacturing process. An excise duty is attracted only when goods are manufactured or produced, for, it is the manufacture or production of goods alone which forms the basis of excise duty. The taxable event, being the manufacture or production, till that event happens there is hardly any occasion for excise duty being imposed, for, the right to levy this duty accrues only by virtue of the manufacture or production of the goods on which it is imposed. The base of the excise duty is the commodity produced and it must, therefore, actually exist for the duty to be attracted.—*NABHA RICE AND OIL MILLS v. THE STATE OF PUNJAB AND OTHERS* [1963] 14 S.T.C. 559 (Pun.).

—Section 2(ff) of the Punjab General Sales Tax Act as amended in 1959 read as follows: “‘Purchase’, with all its grammatical or cognate expressions, means the acquisition of goods specified in Schedule ‘C’ for use in the manufacture of goods for sale for cash or deferred payment or other valuable consideration otherwise than under a mortgage, hypothecation, charge or pledge”: *Held*, (i) that the expression “acquisition” in section 2(ff) only meant transfer; (ii) that the expression “valuable consideration” took colour from the preceding expression “cash

or deferred payment” and only meant some other monetary payment in the nature of cash or deferred payment; (iii) that, therefore, section 2(ff) was not void for legislative incompetence; (iv) that although by reason of the definition of purchase in section 2(ff) the goods mentioned therein would be taxed if purchased by a manufacturer but would not be taxed if purchased by a person other than a manufacturer, there was a reasonable classification in the definition and it did not therefore offend Article 14 of the Constitution. The purchase tax levied under the Punjab General Sales Tax Act, 1948, was not an excise duty since the purpose for which the goods were purchased was only relevant for fixing the taxable event, but the tax was on the purchase of goods. That taxable event was fixed before the goods were actually purchased.—*DEVI DASS GOPAL KRISHNAN AND OTHERS v. THE STATE OF PUNJAB AND OTHERS* [1967] 20 S.T.C. 430 (S.C.).

—“Purchase” was defined in section 2(ff) in the Punjab General Sales Tax Act, 1948, as amended in 1958, as meaning “acquisition of goods other than sugar-cane, foodgrains, and pulses for use in the manufacture of goods for sale for cash or deferred payment or other valuable consideration,.....” On April 19, 1958, the State Government issued a notification fixing 2 naye paise in the rupee as the rate of tax on the purchase of goods by a dealer for use in the manufacture of goods for sale. In 1960, the definition was amended whereby “purchase” was defined as “the acquisition of goods specified in Schedule C for cash or deferred payment or other valuable consideration.....” The notification however was not amended until September 21, 1961, to conform to the definition as amended in 1960: *Held, by the Full Court*, (1) that the notification as issued in 1958 could not be treated as validly made after the 1960 amendment, as it was not open to the State, in the matter of levying purchase tax, to choose to levy tax only on the category of purchases for use in the manufacture of goods for sale; (2) that section 22 of the Punjab General Clauses Act, which was sought to sustain the levy of tax under the original notification of 1958, had no application to the cases; (3) that therefore purchase tax could not be levied for the years 1960-61 and 1961-62 on the basis of the notification issued in 1958. Section 15 of the Central Sales Tax Act, 1956, is not restricted in its application only to registered dealers.—*BHAWANI COTTON MILLS LTD. v. THE STATE OF PUNJAB AND ANOTHER* [1967] 20 S.T.C. 290 (S.C.).

Tax on export—Sales tax on export sales effected prior to 26th January, 1950—Whether an export duty within the meaning of entry 44 of List I of Seventh Schedule to the Government of India Act, 1935.—*MURUGAN AND CO., TUTICORIN v. THE STATE OF MADRAS* [1954] 5 S.T.C. 353 (Mad.).

—Where tax is levied on a sale which takes place in the course of export, there may be an incidental encroachment on the Centre's legislative power under items 19 and 44 of List I. But so long as legislation is in respect of "tax on sales" and there is sufficient nexus for the State to tax the sale, the Act cannot be successfully challenged merely because of its incidental encroachment on a central subject.—*MALCOLM ANGUS TULLOCH v. REVENUE COMMISSIONER, SAMBALPUR, AND OTHERS* [1958] 9 S.T.C. 799 (Ori.).

—By imposing tax on purchases of goods within the State with a view to export them to foreign countries the Legislature does not expressly or by necessary implication impose any tax on exports. These purchases fall within the legislative ambit of the State and no question of any fraud on power can arise as the power is exercised within the strict confines allocated to the State.—*GORANTLA BUTCHIAH CHOWDARY AND OTHERS v. THE STATE OF ANDHRA (NOW ANDHRA PRADESH)* [1958] 9 S.T.C. 104 (A.P.) affirmed by Supreme Court in [1962] 13 S.T.C. 529.

—A tax on a sale which results in export of the goods to a foreign country does not partake of the character of export duty. Having regard to the provisions of clause (a) of Explanation 2 to section 2(h) of the Madras General Sales Tax Act, 1939, which was a valid provision of law, it was competent for the department during the period prior to 26th January, 1950, to levy a tax on a sale which resulted in the export of goods to a foreign country, if at the time the contract of sale is made, the goods were actually in the State of Madras. The decision of the High Court in *Murugan and Co. v. The State of Madras* [1954] (5 S.T.C. 353) does not require reconsideration.—*DEVURAPALLI APPARAO AND OTHERS v. THE STATE OF MADRAS* [1960] 11 S.T.C. 577 (A.P.).

Whether a tax on the sale of goods or on the commodity sold.—Sales tax as imposed by the Bengal Finance (Sales Tax) Act, 1941, is a tax on the sale of goods as clearly mentioned in the Preamble to the Act and the charging section and cannot be considered to be a tax on the goods themselves.—*TATA AIRCRAFT LIMITED v. MEMBER, BOARD OF REVENUE, WEST BENGAL* [1962] 13 S.T.C. 388 (Cal.).

Tax on forward contracts.—Explanation III to section 2(h) of the U.P. Sales Tax Act, 1948, under which "forward contracts" are to be assessed to sales tax even though actual delivery of goods has not taken place is *ultra vires* the U.P. Legislature. Under entry 48 of List II of the Seventh Schedule to the Government of India Act, 1935, the Provincial Legislatures have no power to impose a tax on an agreement to sell which has not materialised into a sale. Forward contracts when made are not sales but are merely agreements to sell. Principles on which writs of *certiorari* and prohibition should be issued by Courts stated : *Held*, that in the circumstances of the case, an order in the nature of *certiorari* to the Sales Tax Officer quashing the assessment orders and a writ in the nature of prohibition restraining him from proceeding further with the assessment proceedings relating to the forward contracts should be issued. *Sapru, J.*—It must be assumed that the British Parliament was conversant with the meaning of the word "sale" both in British and Indian law, *viz.*, the Sale of Goods Act, and that it was that meaning which it intended to assign to that word in entry 48. *Agarwala, J.*—The expression "sale of goods" as used in entry 48 cannot be enlarged by an Act of the Provincial Legislature to include forward contracts or agreements to sell by means of a definition of its own regardless of the fact whether transfer of property takes place or not. It is a fundamental principle of administration of justice in all Courts and for all officers upon whom is cast the duty of deciding a case judicially that they will entertain objections to the jurisdiction of their own authority. If a provision of the Sales Tax Act is *ultra vires* the Legislature which enacted it, it is the duty of the Sales Tax Officer or the Appellate or Revisional Authority, though appointed under the Sales Tax Act itself, to decide whether the Act or any portion thereof is *ultra vires* or not.—*BUDH PRAKASH JAI PRAKASH v. SALES TAX OFFICER, KANPUR, AND OTHERS* [1952] 3 S.T.C. 185 (All.). On appeal to the Supreme Court see the next para.

—There having existed at the time of the enactment of the Government of India Act, 1935, a well-defined and well-established distinction between a sale and an agreement to sell, it would be proper to interpret the expression "sale of goods" in entry 48 in List II of the Seventh Schedule to the Government of India Act, 1935, in the sense in which it was used in legislation both in England and India and to hold that it authorises the imposition of a tax only when there is a completed sale involving transfer of title. A liability to be assessed to sales tax can

arise only if there is a completed sale under which price is paid or is payable and not when there is only an agreement to sell, which can only result in a claim for damages. Damages for breach of contract are not liable to be assessed to sales tax on the ground that they are in the same position as sale price. The power conferred under entry 48 to impose a tax on the sale of goods can therefore be exercised only when there is a sale under which there is a transfer of property in the goods, and not when there is a mere agreement to sell. The U.P. Legislature cannot, by enlarging the definition of "sale" as including forward contracts arrogate to itself a power which is not conferred upon it by the Constitution Act, and the definition of "sale" in sec. 2(h) of the U.P. Sales Tax Act (XV of 1948) is, to that extent, *ultra vires* the Legislature. For the same reason, Explanation III to section 2(h) and section 3B are also *ultra vires* the Legislature. Decision of the Allahabad High Court in *Budh Prakash Jai Prakash v. Sales Tax Officer and Others* [1952] (3 S.T.C. 185; 1952 A.L.J. 332; A.I.R. 1952 All. 754) affirmed.—THE SALES TAX OFFICER, PILIBHIT *v.* BUDH PRAKASH JAI PRAKASH [1954] 5 S.T.C. 193 (S.C.).

Power to impose tax—Scope of the power.—The word "sale" in the Madras General Sales Tax Act, 1939, must be understood in a popular sense. Sales tax can therefore be levied under the Act if the transaction substantially takes place within the State, notwithstanding that the property in the goods does not pass within the State. The object of the Sales Tax Act is to impose a tax on all sales and it is a tax imposed on the occasion of sale. There must however be a completed sale before tax can be levied and there would be a completed sale only when property passes. But so far as the Government is concerned it is immaterial at what point of time property in the goods actually passed from the seller to the buyer. The Madras General Sales Tax Act, 1939, is not *ultra vires* the Madras Legislature on the ground that it is extra-territorial in operation. The appellant-firm carried on the business of purchasing and selling certain articles and had its head office in the City of Madras. The usual course of business was that the firm received orders from merchants in Calcutta for the supply of the articles; the orders were accepted in Madras; the articles were purchased in the local market and despatched to Calcutta by rail or steamer. The relative railway receipts or bills of lading were taken in the name of the sellers and so were the insurance policies. They were then forwarded to their bankers in Calcutta who delivered the same to the consignees on payment of the price and other charges. The question

was whether the turnover of such transactions was liable to sales tax under the Madras General Sales Tax Act, 1939: *Held*, that the appellant was liable to sales tax on the turnover of such transactions inasmuch as the transactions substantially took place within the State.—*POPPAT-LAL SHAH v. STATE OF MADRAS* [1952] 3 S.T.C. 396 (Mad.). On appeal to the Supreme Court see the next para.

—Entry No. 48 in List II of the Seventh Schedule of the Government of India Act, 1935, does not suggest that a legislation imposing tax on sale of goods can be made only in respect of sales taking place within the boundaries of the Province. All that section 100 (3) of the Government of India Act, 1935, provides is that a law could be passed by a Provincial Legislature for the purposes of the Province itself. It admits of no dispute that a Provincial Legislature could not pass a taxation statute which would be binding on any other part of India outside the limits of the Province, but it would be quite competent to enact a legislation imposing taxes on transactions concluded outside the Province, provided that there was sufficient and a real territorial nexus between such transactions and the taxing Province. The title and preamble of the Madras General Sales Tax Act, 1939, clearly show that its object is to impose taxes on sales that take place within the Province, though these words do not necessarily mean that the property in the goods sold must pass within the Province. The expression "sale of goods" is a composite expression consisting of various ingredients or elements. Thus, there are the elements of a bargain or contract of sale, the payment or promise of payment of price, the delivery of goods and the actual passing of title, and each one of them is essential to a transaction of sale though the sale is not completed or concluded unless the purchaser becomes the owner of the property. Under the Madras General Sales Tax Act, 1939, in the definition of sale in section 2 (h) the stress is laid on the element of transfer of property in a sale and no other. The language gives no indication of the popular meaning of sale. The appellant was a partner in a firm with its head office in the city of Madras and carried on the business of purchasing and selling certain articles. The usual course of business that was followed was that the firm received orders in its Madras office from Calcutta merchants for supply of articles. These articles were purchased in the local markets and they were despatched to Calcutta by rail or steamer. The railway receipts and bills of lading were taken in the name of the firm and so also were the insurance policies. They were then sent to the firm's bankers in Calcutta who delivered the

same to the consignees on payment of prices and other charges. The question was whether, in these circumstances, the sale transactions during the period 1st April, 1947, to 31st December, 1947, were liable to be taxed under the Madras General Sales Tax Act, 1939: *Held*, that the mere fact that the contract for sale was entered into within the Province of Madras did not make the transaction, which was completed within another Province, where the property in the goods passed, a sale within the Province of Madras according to the provisions of the Madras General Sales Tax Act, 1939, and no tax could therefore be levied upon such a transaction under the provisions of the Act. A contract of sale becomes a sale under the Sale of Goods Act only when the property in the goods is transferred to the buyer under the terms of the contract itself. The presence of the goods within the Province at the time of the contract would make the sale, if subsequently completed, a sale within the Province by reason of the Explanation added by Act XXV of 1947; but as this Explanation was not in operation during the period 1st April, 1947, to 31st December, 1947, the assessment of sales tax on the transactions during this period was illegal and not warranted by the provisions of the Act. Decision of the Madras High Court in *Poppattal Shah v. State of Madras* [1952] (3 S.T.C. 396) *reversed*.—*POPPATTAL SHAH v. THE STATE OF MADRAS* [1953] 4 S.T.C. 188 (S.C.).

—The Legislature of any State has, under Article 246 (3) read with entry 54 of List II the exclusive power to make laws “for such State or any part thereof” with respect to “taxes on the sale or purchase of goods other than newspapers”. The expression “for such State or any part thereof” cannot be taken to import into entry 54 the restriction that the sale or purchase referred to *must take place within* the territory of that State. All that it means is that the laws which a State is empowered to make must be for the purposes of that State. As pointed out by the Privy Council in the *Wallace Brothers* case [1948] (16 I.T.R. 240) in dealing with the competency of the Indian Legislature to impose tax on the income arising abroad to a non-resident foreign company, the constitutional validity of the relevant statutory provisions did not turn on the possession by the Legislature of extra-territorial powers but on the existence of a sufficient territorial connection between the taxing State and what it seeks to tax. In the case of sales tax it is not necessary that the sale or purchase should take place within the territorial limits of the State in the sense that all the ingredients of a sale like the agreement to sell, the passing of

title, delivery of the goods etc. should have a territorial connection with the State. Broadly speaking, local activities of buying or selling carried on in the State in relation to local goods would be a sufficient basis to sustain the taxing power of the State, provided such activities ultimately resulted in a concluded sale or purchase to be taxed.—*THE STATE OF BOMBAY AND ANOTHER v. THE UNITED MOTORS (INDIA) LTD. AND OTHERS* [1953] 4 S.T.C. 133 (S.C.).

—The Sales Tax Act, which was enacted for the purpose of a levy of a general tax on the sale of goods in the State of Madras, could take any of the elements, which go to constitute the same, as establishing sufficient nexus with the territory to justify the imposition of the tax. Explanation 2 to section 2(h) of the Madras General Sales Tax Act which was added by the Madras General Sales Tax (Amendment) Act, 1947, and which imposed a tax on a sale if the goods were actually in the State at the time of the contract of sale is not repugnant to the provisions of the Sale of Goods Act. It is not therefore invalid on the ground that previous sanction of the Governor-General was not obtained for enacting the amendment. As the power of the Provincial Legislature to levy a tax on the sale of goods was derived exclusively from item 48 in the Provincial List and as the Sale of Goods Act related to an item in the Concurrent List, the subject-matters of the Sales Tax Act and the Sale of Goods Act were entirely different and therefore the question of repugnancy under section 107 of the Government of India Act did not arise.—*LOUIS DREYFUS & COMPANY LTD. v. THE STATE OF MADRAS* [1954] 5 S.T.C. 307 (Mad.).

—Explanation 2 to section 2(h) of the Madras General Sales Tax Act, 1939, was not *ultra vires* the Madras Legislature on the ground that it was extra-territorial in operation. The Explanation did not seek to clothe the State with power to tax executory contracts of sale but only with levy of tax on completed sales. It would be quite competent for the Legislature under entry No. 48 of List II to enact a legislation imposing taxes on transactions concluded outside the Province provided that there was sufficient and real territorial nexus between such transactions and the taxing Province. The existence of the goods inside the State at the time when the contract of sale or purchase in respect thereof was made afforded sufficient nexus and the Legislature was competent to impose a tax in respect of such a transaction wherever the actual sale took place. The power of the Provincial Legislature to levy sales tax was derived from entry 48 of List II

and not entry 10 of List III. The subject-matters of the Sales Tax Act and the Sale of Goods Act are entirely different. Therefore no question of repugnancy under section 107 of the Government of India Act, 1935, arose and the Explanation 2 to section 2(h) was not invalid on the ground that assent of the Governor-General was not obtained. *Louis Dreyfus & Company Ltd. v. The State of Madras* [1954] (5 S.T.C. 307; (1954) 2 M.L.J. 326) followed.—*PERI KAMESWARA RAO AND OTHERS v. THE STATE OF MADRAS* [1955] 6 S.T.C. 143 (Andh.).

—The Legislature of a Province has, under section 100(3) of the Government of India Act, 1935, read with item 48 of List II of the Seventh Schedule the exclusive power to make laws “for a Province or any part thereof” with respect to “taxes on the sale of goods and on advertisements”. The expression “for a Province or any part thereof” in section 100(3) cannot be interpreted to mean that the sale of goods must take place within the territory of the Province. All that the section means is that the law which a Province is empowered to make must be for the purposes of that Province. A transaction of sale is a composite transaction and consists of many legal ingredients, like agreement of sale, passing of title and delivery of goods. But it is not necessary for the purpose of legislative jurisdiction that all the legal ingredients of sale or even the transfer of title should have taken place within the Province. It is sufficient if there is some territorial *nexus* or connection between the taxing authority and the transaction sought to be taxed. The fact that the goods are manufactured in Bihar constitutes a sufficient territorial *nexus* or connection which confers jurisdiction upon the Provincial Legislature to impose the tax. The authority of the decision of the Supreme Court in *The State of Bombay v. United Motors (India) Ltd.* [1953] (4 S.T.C. 133) on the doctrine of *nexus* has not been affected or in any way shaken by the subsequent decision of the Supreme Court in *Bengal Immunity Company Limited v. The State of Bihar* [1955] (6 S.T.C. 446).—*TATA IRON AND STEEL CO., LTD. v. THE STATE OF BIHAR* [1956] 7 S.T.C. 158 (Pat.) affirmed by Supreme Court in [1958] 9 S.T.C. 267. (See pages 298-299 *infra*).

—The power of the Provincial Legislature to make a law imposing sales tax is granted by section 100(3) of the Government of India Act, 1935, read with item 48 of List II of the Seventh Schedule. The Legislature of a Province has under these provisions the exclusive power to make laws “for a Province or any part thereof”

with respect to “taxes on the sale of goods and on advertisements”. But the expression “for a Province or any part thereof” cannot be interpreted to mean that the sale of goods must take place within the territory of the Province. All that the section means is that the law which a Province is empowered to make must be for the purpose of that Province. A transaction of sale is a composite transaction and consists of many legal ingredients, like agreement of sale, passing of title and delivery of goods. But it is not necessary for the purpose of legislative jurisdiction that all or any of the legal ingredients of sale should take place within the Province. It is sufficient, if there is some territorial *nexus* or connection between the taxing authority and the transaction sought to be taxed. The fact that the goods are produced or manufactured in Bihar constitutes a sufficient territorial *nexus* or connection which confers jurisdiction upon the Provincial Legislature to impose the tax. It is not necessary for the purpose of legislative jurisdiction to investigate as to whether any of the elements of a transaction of sale is located within the territorial limits of the State. The real question is whether there is a real and pertinent connection between the subject-matter of law and the territorial limits of the State. The connection must be between the transaction of sale and the territorial limits of the taxing State and not that any component of the transaction of sale should take place within the State’s territorial limits. The authority of the decision in *The State of Bombay v. United Motors (India) Ltd.* [1953] (4 S.T.C. 133) on the doctrine of *nexus* has not been affected or in any way shaken by the subsequent decision of the Supreme Court in *Bengal Immunity Co., Ltd. v. The State of Bihar* [1955] (6 S.T.C. 446). *Sales Tax Officer, Pilibhit v. Messrs Budh Prakash Jai Prakash* [1954] (5 S.T.C. 193; A.I.R. 1954 S.C. 459) distinguished.—*DEBIJHORA TEA CO., LTD. v. THE STATE OF BIHAR* [1956] 7 S.T.C. 267 (Pat.) affirmed by Supreme Court in [1960] 11 S.T.C. 793. See below.

—The provisions of section 2(g) of the Bihar Sales Tax Act, 1947, as amended by Bihar Act VI of 1949 were constitutionally valid. It is not necessary for the purpose of legislative jurisdiction that all the legal ingredients of sale or even the transfer of title should have taken place within the State. It is sufficient if there is some territorial *nexus* or connection between the taxing State and the transaction sought to be taxed. The fact that the goods are manufactured inside a State constitutes a sufficient territorial *nexus* or

connection which confers jurisdiction upon the State Legislature to impose the tax. The authority of the decision of the Supreme Court in *State of Bombay v. United Motors (India) Ltd.* [1953] (4 S.T.C. 133; [1953] S.C.R. 1069) and *Poppallal Shah v. State of Madras* [1953] (4 S.T.C. 188; [1953] S.C.R. 677) on the doctrine of *nexus* has not been affected in any way by the subsequent decision of the Supreme Court in *Bengal Immunity Co., Ltd. v. The State of Bihar* [1955] (6 S.T.C. 446). *Tata Iron and Steel Co., Ltd. v. The State of Bihar* [1956] (7 S.T.C. 158) followed.—*TATA IRON & STEEL CO., LTD. v. THE STATE OF BIHAR* [1957] 8 S.T.C. 26 (Pat.) affirmed by the Supreme Court in [1960] 11 S.T.C. 793. See below.

—The provisions of section 4(1) read with section 2(g), second proviso, of the Bihar Sales Tax Act, 1947, as amended by the Bihar Sales Tax (Amendment) Act, 1949, were within the legislative competence of the Legislature of the Province of Bihar. The second Proviso added by the Amending Act did not extend the meaning of the expression “sale” so as to include a contract of sale; what it actually did was to lay down certain circumstances in which a sale, although completed elsewhere, was to be deemed to have taken place in Bihar. The circumstances mentioned in the proviso to section 2(g) of the Act, namely, the presence of the goods in Bihar at the date of the agreement of sale or their production or manufacture there constituted a sufficient *nexus* between the taxing Province and the sale wherever that might take place. *Tata Iron and Steel Co. Ltd. v. The State of Bihar* [1957] (8 S.T.C. 26) and *Debijhora Tea Co. Ltd. v. The State of Bihar* [1956] (7 S.T.C. 267) affirmed.—*BHARAT SUGAR MILLS LTD. AND OTHERS v. THE STATE OF BIHAR AND ANOTHER* [1960] 11 S.T.C. 793 (S.C.).

—The fact that the goods are manufactured in Bihar constitutes a sufficient territorial *nexus* or connection which confers jurisdiction upon the Provincial Legislature to impose the tax. The location of the *situs* of goods has a real and pertinent connection to the transaction of sale and the *situs* of the goods attracts constitutional authority of the Provincial Legislature to tax the sale transaction. Therefore the amendment of section 2(g) introduced by the Bihar Sales Tax (Amendment) Act (Bihar Act VI of 1949) authorising levy of sales tax on sale of goods manufactured in Bihar, wherever the sale takes place, is constitutionally valid. *Tata Iron and Steel Co., Ltd. v. The State of Bihar* [1956] (7 S.T.C. 158) followed.—*ROHTAS INDUSTRIES LTD. v. THE STATE OF BIHAR* [1956] 7 S.T.C. 391 (Pat.).

—The authority of the decision of the Supreme Court in *State of Bombay and Another v. United Motors (India) Ltd. and Others* [1953] (4 S.T.C. 133) on the doctrine of *nexus* has not been affected or in any way shaken by the subsequent decision of the Supreme Court in *Bengal Immunity Company Limited v. The State of Bihar and Others* [1955] (6 S.T.C. 446). The passing of title and the delivery of the goods are the most important elements in the transaction of sale and if these elements take place within the territorial limits of Bihar, there is sufficiency of territorial *nexus*. It is not correct to say that only the consuming State has the authority to impose sales tax by virtue of the Explanation to Article 286(1)(a). That Explanation is not the source of the taxing power of the States. The grant of taxing power under the Constitution to the States is under Article 246(3) read with entry 54 of List II of the Seventh Schedule. The provision of Article 286(1)(a) is only in the way of restriction or fetter on the legislative power of taxation.—*TOBACCO MANUFACTURERS (INDIA) LIMITED v. COMMISSIONER OF SALES TAX, BIHAR, AND ANOTHER* [1956] 7 S.T.C. 745 (Pat.) affirmed by Supreme Court in [1961] 12 S.T.C. 87.

—The provisions of section 2(g) of the Bihar Sales Tax Act, 1947, as amended by Bihar Act VI of 1949 were constitutionally valid. The circumstance that the goods were manufactured in Bihar constituted a sufficient territorial *nexus* or connection which conferred jurisdiction upon the Provincial Legislature to impose the tax.—*DEBU LAL GUDARMAL v. THE STATE OF BIHAR* [1957] 8 S.T.C. 583 (Pat.).

—The provisions of section 2(g) of the Bihar Sales Tax Act, 1947, as amended by Bihar Act VI of 1949 were constitutionally valid and the imposition of sales tax by the revenue authorities for the period from 1st April, 1949, to the 25th January, 1950, with regard to the sale of goods delivered outside the State of Bihar was constitutionally valid.—*INDIAN COPPER CORPORATION LTD. v. THE STATE OF BIHAR AND OTHERS* [1958] 9 S.T.C. 204 (Pat.) modified by the Supreme Court in [1961] 12 S.T.C. 56.

—Section 4(1) of the Bihar Sales Tax Act, 1947, imposed on the dealer the liability to pay a tax on “sale” as defined in section 2(g). Both before and after the amendment of section 2(g) by Act VI of 1949 the principal part of the definition of “sale” meant the transfer of the property in goods. All that the second proviso did was not to extend the definition of “sale”, but only to locate the “sale” in Bihar in certain circumstances mentioned in that proviso. The basis of liability under section 4(1) remained as

before, namely, to pay tax on "sale". The fact of the goods being in Bihar at the time of the contract of sale or the production or manufacture of goods in Bihar did not by itself constitute a "sale" and did not by itself attract the tax. The taxable event still remained the "sale" resulting in the transfer of ownership in the thing sold from the seller to the buyer. No tax liability actually accrued until there was a concluded sale in the sense of transfer of title. Therefore the provisions of section 4(1) read with section 2(g), second proviso, were well within the legislative competency of the Legislature of the Province of Bihar. Under clause (ii) of the second proviso to section 2(g) the producer or manufacturer became liable to pay the tax not because he produced or manufactured the goods, but because he sold the goods. The tax was laid on the producer or manufacturer only *qua* seller and not *qua* manufacturer or producer. Therefore the tax imposed is a tax on the sale of goods and not a duty of excise. The doctrine of nexus is also applicable to sales tax legislation. The *nexus* theory does not impose the tax. It only indicates the circumstance in which a tax imposed by an Act of the Legislature may be enforced in a particular case and unless eventually there is a concluded sale in the sense of passing of the property in the goods no tax liability attaches under the Act. One or more of the several ingredients constituting a sale only furnished the connection between the taxing State and the "sale". The presence of the goods at the date of the agreement for sale in the taxing State or the production or manufacture in that State of goods the property wherein eventually passed as a result of the sale wherever that might have taken place, constituted a sufficient *nexus* between the taxing State and the sale. Bose, J.—A State can only impose a tax on the sale of goods. It has no power to tax extra-territorially. Therefore it can only tax sales that occur in the State itself. It is fallacious to look to the goods, or to the elements that constitute a sale, because the power to tax is limited to the sale and the tax is not on the goods or on the agreement to sell or on the price as such but only on the sale. Therefore unless the sale itself takes place in the State, the State cannot tax. Decision of the Patna High Court in *Tata Iron and Steel Co., Ltd. v. State of Bihar* [1956] (7 S.T.C. 158) affirmed.—*TATA IRON & STEEL CO., LTD. v. THE STATE OF BIHAR* [1958] 9 S.T.C. 267 (S.C.).

—The doctrine of *nexus* is applicable to laws imposing tax on sales and it would therefore be competent to a State to enact a law imposing tax

on sales not merely when the property in the goods passed within the State but even when it did not, if there was sufficient connection between the State and the transaction of sale.—*M. P. V. SUNDARARAMIER & CO. AND OTHERS v. THE STATE OF ANDHRA PRADESH AND ANOTHER* [1958] 9 S.T.C. 298 (S.C.).

—Under the second proviso to section 2(g) of the Orissa Sales Tax Act, 1947, if at the time of the contract of sale the goods are in Orissa, wherever the contract might have been made and if subsequently a completed sale ensues wherever might be the situs of the sale, that sale shall be deemed to be a sale in Orissa, for the purpose of assessment of sales tax : *Held*, that the theory of *nexus* was applicable to sales tax legislation also and the place where the goods lay at the time of the contract of sale was a sufficient *nexus* for the Legislature of that place to assume jurisdiction to assess sales tax and therefore the second proviso was valid. Section 6 of the Sale of Goods Act, 1930, does not say that at the time of the contract of sale the goods must exist as "goods". There can be a contract of sale of future goods also. It is therefore not correct to say that for the purpose of applying the second proviso to section 2(g), the goods must exist as goods at the time of the contract of sale. If a mine owner agrees to sell ores from his mines on the understanding that after the date of the agreement the ores will be extracted from them and delivered to the buyer, that contract must be held to be a contract for the "sale of goods" for the purpose of applying the second proviso.—*MALCOLM ANGUS TULLOCH v. THE REVENUE COMMISSIONER, SAMBALPUR, AND OTHERS* [1958] 9 S.T.C. 799 (Ori.).

—Explanation 2 to section 2(h) of the Madras General Sales Tax Act, 1939, which fixed the *situs* of a sale in the Madras State if the goods were within the State at the time the contract of sale was made satisfied the test of sufficient territorial *nexus* and was therefore constitutionally valid.—*BATCHU SUBBA RAO & Co. v. COMMERCIAL TAX OFFICER, EAST GODAVARI, KAKINADA* [1959] 10 S.T.C. 394 (A.P.).

—*Held, by the Full Bench*.—Transactions falling within the definition of "sale" in the Madras General Sales Tax Act, 1939, and not proved to be outside sales within the Explanation to Article 286(1)(a) of the Constitution of India can be assessed to sales tax under the Madras General Sales Tax Act. Even after the coming into force of the Constitution of India, the State is competent to legislate and levy tax on sales or purchases on the basis of the theory of *nexus* as embodied in Explanation (2) to section 2(h) of the

Madras General Sales Tax Act. Facts entitling an assessee to invoke the aid of the Explanation to Article 286(1)(a) of the Constitution must be established by him. In the matter of the levy of sales tax, the provisions of the Sales Tax Act, subject to the constitutional limitations, if any, must determine the *situs* of a sale. Having regard to the avowed purpose of the Explanation in Article 286(1)(a), sales not hit by the other bans and not falling within the Explanation are to be dealt with according to the law of the State recognising the doctrine of sufficient territorial *nexus*. The provisions of section 22 of the Madras General Sales Tax Act, 1939, and section 2(h) along with the Explanation thereto have to be read together as one harmonious scheme and where the Explanation to section 22 applies, that provision will govern the situation. Otherwise the Explanation to section 2(h) will operate. Certain contracts of sale were made in the State with buyers residing in the State and the bills were prepared in the buyers' names. Under instructions of the buyers the goods were booked to some out-stations by the sellers, but the sellers were the consignees and the railway receipts were immediately endorsed in favour of the buyers against the payment of the full invoice price of the consignment: *Held*, by the Division Bench, (1) that the sales were inside sales and were liable to be taxed under the Madras General Sales Tax Act, 1939; (2) that, even assuming they were inter-State sales, as the period of assessment was 1954-55 the levy of tax on such sales had been validated by the Sales Tax Laws Validation Act, 1956.—*SRI RAMAKRISHNA COMMERCIAL SOCIETY LTD. v. STATE OF ANDHRA (NOW ANDHRA PRADESH)* [1961] 12 S.T.C. 31 (A.P.).

[On the question whether the State of Madras can tax sales falling under Explanation 2 to section 2(h) after the enactment of the Sales Tax Validation Act, 1956, see the Cases digested under Sales Tax Laws Validation Act, 1956, *infra*.]

—Clause (ii) of Explanation II to section 2(h) of the U.P. Sales Tax Act, 1948, was not *ultra vires* the Legislature. That clause covers the same field as clause (ii) of the second proviso to section 2(g) of the Bihar Sales Tax Act, 1947, and therefore the principle laid down by the Supreme Court in *Tata Iron and Steel Co. Ltd. v. The State of Bihar* [1958] 9 S.T.C. 267 is fully applicable to the U.P. Sales Tax Act. A tax on sale of goods is valid if the goods, wherein the title passes eventually outside the State, are produced or manufactured in the taxing State and the sale wherever that takes place is by the same person who produced or manufactured those goods in the taxing State.—*TARA OIL AND GINNING MILLS v.*

COMMISSIONER OF SALES TAX, U.P.. LUCKNOW [1959] 10 S.T.C. 294 (All.).

—During the pre-Constitution period, sales which took place outside the State could be taxed on the basis of the nexus theory.—*THE PERFECT POTTERY COMPANY LTD., JABALPUR v. COMMISSIONER OF SALES TAX, MADHYA PRADESH* [1967] 19 S.T.C. 234 (M.P.).

—The appellant-company, a manufacturer and dealer of oil in the Province of Uttar Pradesh, had its own depots outside the Province. For the financial year 1948-49 and the subsequent period from April 1, 1949, to January 25, 1950, the appellant sent its goods to its depots outside Uttar Pradesh, *e.g.*, to Calcutta, before any contract of sale in respect of the goods was made. After the goods had reached the depots outside Uttar Pradesh they were sold to various parties. The question was whether these sales were liable to sales tax under the U.P. Sales Tax Act, 1948, and whether clause (ii) of Explanation II to section 2(h) of the Act was *intra vires* the Legislature: *Held*, (i) that there was nothing in the language or context of Explanation II to section 2(h) to suggest that in order that sales tax might be attracted under the Act the goods should be produced or manufactured in Uttar Pradesh after the contracts for sale had been entered into. For attracting the tax liability it was not necessary that the goods must have been manufactured or produced after and not before the agreement for sale. The sales effected during the relevant periods were therefore liable to sales tax; (ii) that Explanation II(ii) to section 2(h) of the Act was not *ultra vires* the Legislature. *Held also*, that since the appellant had itself applied to the Judge, Revisions, under section 10 contending that Explanation II to section 2(h) was *ultra vires*, it was not open to the appellant to deny the jurisdiction of the revisional authority to decide the question or to challenge the jurisdiction of the High Court to examine the question of law referred to it under section 11 and to pronounce upon the constitutional validity of the provision. In other words, it must be taken that the appellant had voluntarily submitted to the jurisdiction of the revisional authority and of the High Court on the matter in issue and having submitted to the jurisdiction and having taken the chance of judgment in its favour, it was not right that the appellant should take exception to the jurisdiction of the High Court when the judgment had gone against it. A transaction of sale is a composite transaction and consists of legal ingredients like agreements of sale, passing of title and delivery of goods but it is not necessary for the purpose of legislative

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jurisdiction of the Provincial Legislature that all legal ingredients of sale or even the transfer of title should have taken place inside the Province. It is sufficient if there is a proper territorial nexus or connection between the taxing authority and the transaction sought to be taxed. The fact that the goods are manufactured in the Province constitutes a real and pertinent nexus or connection which confers jurisdiction upon the Provincial Legislature to impose the tax. The right to apply for a reference under section 11(3) of the U.P. Sales Tax Act, as amended in 1954, is conferred upon the person aggrieved by an order passed under section 10, and this right exists regardless of when the application for revision was made. Only the existence of an order under section 10 is required for the accrual of the right to make an application for a reference. *Held, accordingly*, that where an appellate order was made on January 4, 1952, and the revision application was filed by the dealer before the amendment of section 11(3) by the amending Act of 1954 came into force, and the revising authority disposed of the revision on July 8, 1957, and the Commissioner thereafter applied for a reference under section 11(3) as amended in 1954, the Commissioner had the right to apply for a reference even though the appellate order and the dealer's revision application were made before the amendment of 1954 came into force. The amendment of section 11(3) in 1954 was merely a procedural matter.—**TIKARAM AND SONS LTD. v. COMMISSIONER OF SALES TAX, U.P.** [1968] 22 S.T.C. 308 (S.C.).

Extra-territorial operation.—The Madras General Sales Tax Act, 1939, is not *ultra vires* the Madras Legislature on the ground that it is extra-territorial in operation.—**POPPATLAL SHAH v. THE STATE OF MADRAS** [1952] 3 S.T.C. 396 (Mad.); [1953] 4 S.T.C. 188 (S.C.); **C. GOVINDARAJULU NAIDU & Co. v. STATE OF MADRAS AND ANOTHER** [1952] 3 S.T.C. 405 (Mad.).

—Explanation II to section 2(g) of the C.P. and Berar Sales Tax Act, 1947, cannot be challenged on the ground of extra-territoriality because the Legislative List gives the most extensive powers conceivable for purposes of taxation, including the power to create a fiction by which, if a substantial portion of the entire contract of sale of goods takes place in this Province, the rest of the transaction can be brought in.—**SHRI RAM GULABDAS v. BOARD OF REVENUE, MADHYA PRADESH, AND ANOTHER** [1952] 3 S.T.C. 343 (Nag.).

—The question of extra-territoriality is not germane for the construction of Article 286.—

Per Jagannadhadas, J., in THE BENGAL IMMUNITY COMPANY LIMITED v. THE STATE OF BIHAR AND OTHERS [1955] 6 S.T.C. 446 (S.C.).

—Whether the machinery sections of the Bihar Sales Tax Act are valid or not, that Act in so far as it authorises the imposition of tax on sales falling within the Explanation to Article 286(1)(a) is neither *ultra vires* the powers of the State Legislature nor bad on the ground that it is extra-territorial in its operation. Whether a subordinate Legislature has power to enact laws with extra-territorial operation will depend on the terms of the Constitution Act which creates it and subject to any limitations contained therein, it has in respect of the topics assigned to it powers of legislation as plenary as the Sovereign Legislature which constitutes it. Under section 99(1) and section 100 of the Government of India Act, 1935, a law enacted by the Indian Legislature in respect of the matters enumerated in the appropriate lists would be valid provided it is for the territory entrusted to their charge and it would depend on whether there was sufficient territorial connection between the person who is sought to be charged or proceeded against under the law and the country which enacts the law. When such connection exists, the law is not strictly speaking extra-territorial, and it is not *ultra vires* on the ground that the person is not residing within the State which enacts the law. The powers of the Union and the State under sections 99(1) and 100 of the Government of India Act, 1935, as also under Articles 245(1) and 246 of the Constitution of India in respect of the matters mentioned in their respective lists have the same content and quality, and if legislation with extra-territorial operation is within the competence of the Union, it is equally within the competence of the State. The words "extra-territorial operation" are used in two different senses as connoting firstly, laws in respect of acts or events which take place inside the State but have operation outside, and secondly, laws with reference to the nationals of a State in respect of their acts outside. In its former sense, the laws are strictly speaking intra-territorial though loosely termed "extra-territorial". Under Article 245(1) it is within the competence of the Parliament and of the State Legislatures to enact laws with extra-territorial operation in that sense. The words "laws with extra-territorial operation" in Article 245(2) must be understood in their second and strict sense as having reference to the laws of a State for their nationals in respect of acts done outside the State. As the validity of the Bihar Sales Tax Act is challenged on the ground of its extra-territorial operation in its first sense,

Article 245(2) has no application. A power to tax is a matter of substantive law, whereas the machinery sections providing for the execution of that power, such as assessment and collection of tax, pertain to the domain of adjectival law, and the two are distinct and separable. The power to tax does not depend on the ability to realise it.—*Per Venkatarama Ayyar, J.*, in *THE BENGAL IMMUNITY COMPANY LIMITED v. THE STATE OF BIHAR AND OTHERS* [1955] 6 S.T.C. 446 (S.C.).

—The second Explanation added to section 2(h) of the Madras General Sales Tax Act, 1939, by Act XXV of 1947, was not *ultra vires* the State Legislature on the ground that it was extra-territorial in operation. It was also not void as being repugnant to the provisions of the Sale of Goods Act, 1930. The power of the State Legislature to enact the law being derived from item 48 in the Provincial Legislative List and not from item 10 of the Concurrent List, and the subject-matters of the Sales Tax Act and the Sale of Goods Act being different, the question of repugnancy under section 107 of the Government of India Act, 1935, did not arise. *Louis Dreyfus and Company Ltd. v. The State of Madras* [1954] (5 S.T.C. 307) and *Peri Kameswara Rao v. The State of Madras* [1955] (6 S.T.C. 143) followed.—*THE STATE OF MADRAS (NOW ANDHRA PRADESH) v. BATCHU SUBBA RAO & Co.* [1959] 10 S.T.C. 210 (A.P.).

—See also the Cases cited at page 295 *et seq.*

Power of Parliament to levy tax on sale of animals and birds.—Animals and birds in captivity (monkeys, minahs and parrots) are movable property and they are therefore “goods” as that word is defined in section 2(d) of the Central Sales Tax Act, 1956. Even if the sale of such things would not fall within entry 54 of List II of the Seventh Schedule of the Constitution or entry 92-A of List I, it would fall within entry 97 of List I and Parliament would be competent to levy a tax on such sales.—*K. J. ABRAHAM v. THE ASSISTANT SALES TAX OFFICER, ALWAYE* [1960] 11 S.T.C. 291 (Ker.).

Power to impose tax on mere contract of sale.

—The second proviso in section 2(g) of the Orissa Sales Tax Act, 1947, seems to be *ultra vires*. The term “sale” under the Orissa Sales Tax Act cannot be made wider than what it meant under the Government of India Act, 1935, *i.e.*, a completed transaction involving a transference of interest. If it means anything other than or wider than the meaning of the word “sale” appearing in the Government of India Act, 1935, to that extent it must be said to be *ultra vires*. Mere contract for sale within the State of Orissa cannot, therefore, be taxable under the Orissa

Sales Tax Act. The Commissioner was directed to state a case on the question “whether in the circumstances of the case the assessment is legal being based on the position that mere contract for sale within the State of Orissa and the export of goods from Orissa is sufficient for taxation under the Orissa Sales Tax Act, 1947.” *Budh Prakash Jai Prakash v. Sales Tax Officer, Kanpur, and Others* [1952] (3 S.T.C. 185) relied on.—*BHARAT SABAIGRASS LTD., CALCUTTA v. COLLECTOR OF COMMERCIAL TAXES, ORISSA* [1952] 3 S.T.C. 453 (Ori.).

—Mere contract for sale within the State of Orissa and the export of goods from Orissa is not sufficient for taxation under the Orissa Sales Tax Act, 1947. A liability to be assessed to sales tax arises only if there is a completed sale and not when there is only an agreement to sell. *Sales Tax Officer, Pilibhit v. Budh Prakash Jai Prakash* [1954] (5 S.T.C. 193; A.I.R. 1954 S.C. 459) followed. *Poppattal Shah v. State of Madras* [1953] (4 S.T.C. 188; A.I.R. 1953 S.C. 274), *State of Bombay v. United Motors (India) Ltd.* [1953] (4 S.T.C. 133; A.I.R. 1953 S.C. 252) and *Louis Dreyfus and Co. Ltd., Madras v. State of Madras* [1954] (5 S.T.C. 307; A.I.R. 1954 Mad. 932) distinguished. *Budh Prakash Jai Prakash v. Sales Tax Officer* [1952] (A.I.R. 1952 All. 754; 1952 A.L.J. 332; 3 S.T.C. 185) referred to.—*BHARAT SABAIGRASS LIMITED v. COLLECTOR OF COMMERCIAL TAXES, ORISSA, CUTTACK* [1955] 6 S.T.C. 87 (Ori.). On appeal to the Supreme Court see next para.

—The definition of “sale” in the Orissa Sales Tax Act, 1947, did not purport to tax a mere agreement to sell nor did the second proviso there-to purport to do so. What the second proviso did was to fix the *situs* of the sale in Orissa when the goods were actually in Orissa at the time the contract of sale was made and this was altogether different from imposing a tax on a mere agreement to sell. The doctrine of nexus is applicable to sales tax legislation. [The Court held that the reference directed by the Orissa High Court was incompetent, because no question of law as was formulated by that Court arose on the facts of the case and it was quite unnecessary to answer such a question.] *Bharat Sabaigrass Ltd. v. Collector of Commercial Taxes, Orissa* [1955] (6 S.T.C. 87) reversed. *Tata Iron & Steel Co., Ltd. v. The State of Bihar* [1958] (9 S.T.C. 267) followed. *Sales Tax Officer, Pilibhit v. Messrs Budh Prakash Jai Prakash* [1954] (5 S.T.C. 193) referred to.—*COLLECTOR OF COMMERCIAL TAXES, CUTTACK v. BHARAT SABAIGRASS LTD.* [1958] 9 S.T.C. 289 (S.C.).

Power to impose tax on purchasers.—A power to tax sale of goods is, in reality, a power to tax

the transaction and the power to tax the transaction carries with it the power to tax either party thereto. Entry No. 48 in the Provincial Legislative List in the Government of India Act, 1935, is of sufficient amplitude to authorise the levy of a tax on purchasers and therefore the Madras General Sales Tax Act (IX of 1939) is not *ultra vires* the Madras Legislature on the ground that it imposed a tax on purchasers. Although the liability to pay a tax on sales is thrown on the purchaser not by the Act but by the Turnover and Assessment Rules framed under the Act, they are not open to challenge on the ground of unconstitutional delegation by the Legislature of its functions to the executive because what the Legislature had done was merely to authorise the rule-making authorities to carry out the policies enunciated in the Statute and to fill up the details and the Rules themselves were to come into operation only after they were approved by a resolution of the House. The provisions of the Act and the Rules framed thereunder are also not repugnant to Article 14 of the Constitution as being discriminative against purchasers in some trades while taxing sellers generally. All the provisions in the Rules excepting rule 16(5) are valid. They are not void on the ground that they do not properly carry out the policy laid down in the Act and are inconsistent therewith. Rule 16(5) which provides that sales of hides or skins by dealers other than licensed dealers will be "liable to taxation on each occasion of sale" is however repugnant to section 5(vi) of the Act which provides for taxation at a single point. Consequently rule 16(5) is *ultra vires*. Where the petitioners were duly served with notice under the Act and had ample opportunity of putting forward before the Tribunals constituted under the Act all the contentions based on the provisions of the Act or the Rules, they could not be permitted to put forward in proceedings by way of writs under the Constitution contentions which were available to them before the Tribunals. The only pleas that were open to them in such proceedings were those which could not have been urged before the Tribunals, such for example, the question whether the Act was *ultra vires* which could not be entertained by a Tribunal which owed its very existence to the Act. Where the tax is determined after notice to the assessee, it is not repugnant to rules of natural justice to provide that the validity of assessment shall not be questioned at the stage of realisation of the tax. Consequently section 16A of the Madras General Sales Tax Act, 1939, cannot be declared void as being opposed to rules of natural justice. Advance payment of tax is a well recognised feature in the

mode of realising tax and the provision in rule 15(2) is valid. A classification of merchants into those who take out licence and those who do not is one resting on a rational basis and is therefore valid.—V. M. SYED MOHAMED & Co., AND ANOTHER v. THE STATE OF MADRAS AND ANOTHER [1952] 3 S.T.C. 367 (Mad.). On appeal to Supreme Court see below :

—Held, that the Madras General Sales Tax Act, 1939, is not *ultra vires* the powers of the Madras Legislature, that it is not open to the objection that it is an unconstitutional delegation by the Legislature of its functions to the executive, that it is not repugnant to Article 14 of the Constitution as being discriminative and that the Turnover and Assessment Rules framed thereunder are valid excepting only rule 16(5). V. M. Syed Mohamed & Co. v. The State of Madras and Another [1952] (3 S.T.C. 367) followed.—C. GOVINDARAJULU NAIDU & Co. v. THE STATE OF MADRAS AND ANOTHER [1952] 3 S.T.C. 405 (Mad.).

—Entry 48 in List II of the Seventh Schedule to the Government of India Act, 1935, on a proper construction, was wide enough to cover a law imposing tax on the purchaser of goods as well and the Constituent Assembly in entry 54 of List II in the Seventh Schedule to the Constitution of India, 1950, accepted this liberal construction of the corresponding entry 48 and expressed in clearer language what was implicit in that corresponding entry. Therefore the Madras General Sales Tax Act, 1939, is not *ultra vires* the Madras Legislature on the ground that it imposed a tax on purchasers. The guarantee of equal protection of laws does not require that the same law should be made applicable to all persons. Article 14 of the Constitution does not forbid classification for legislative purposes, provided that such classification is based on some differentia having a reasonable relation to the object and purpose of the law in question. There is a strong presumption in favour of the validity of legislative classification and it is for those who challenge it as unconstitutional to allege and prove beyond all doubt that the legislation arbitrarily discriminates between different persons similarly circumstanced. As the appellants had not proved beyond all doubt that the Madras General Sales Tax Act, 1939, arbitrarily discriminates between different persons similarly circumstanced, it had not become void under Article 14 of the Constitution. Although sub-rule (5) of rule 16 of the Madras General Sales Tax (Turnover and Assessment) Rules is repugnant to section 5 (vi) of the Act and is therefore *ultra vires*, that sub-rule is clearly severable and cannot affect the validity of the rules which may

otherwise be within the ambit of the Act. Majority decision in *Chiranjilal Chowdhury v. The Union of India* ([1950] S.C.R. 869) applied. Decision of the Madras High Court in *V. M. Syed Mohamed & Co. and Another v. The State of Madras and Another* [1952] (3 S.T.C. 367) affirmed.—*V. M. SYED MOHAMMAD & COMPANY AND ANOTHER v. THE STATE OF ANDHRA AND OTHERS* [1954] 5 S.T.C. 108 (S.C.).

—Sales tax is a tax levied on the occasion of the sale of goods and is a tax on the proceeds thereof, whether taken individually or collectively. Whether the tax is levied on the seller or the purchaser, its ultimate incidence is on the consumer. Under normal conditions, the tax is regarded by the dealer as an addition to cost and is added to selling prices. Whether the tax is collected in the first instance from sellers or purchasers, it would normally be passed on to the consumers and the tax would be really a tax on sales. Entry No. 48 in List II of the Seventh Schedule to the Government of India Act, 1935, was wide enough to authorise a law imposing tax on purchasers as well as sellers of goods.—*THE GOVERNMENT OF ANDHRA v. N. NAGENDRAPPA AND OTHERS* [1956] 7 S.T.C. 568 (Andh.).

—In view of entry 54 in List II of the Seventh Schedule of the Constitution of India it is competent for the Legislature to tax not only sales but also purchases of goods and also to provide a special mode of recovery either from the seller or the buyer as the Legislature may think fit.—*K. S. E. AHMED MOHINUDDIN v. SALES TAX OFFICER, GANJAM* [1956] 7 S.T.C. 639 (Ori.).

—Tax can be collected either at the sale point or purchase point and power is vested in the department to levy tax on groundnuts at the purchase point.—*BERAR OIL INDUSTRIES AND ANOTHER v. DEPUTY COMMISSIONER OF COMMERCIAL TAXES, ANANTAPUR* [1959] 10 S.T.C. 199 (A.P.).

—*Purchases from agriculturists.*—Under the Hyderabad General Sales Tax Act, 1950, a dealer, as defined in it, a purchaser of groundnuts from an agriculturist is liable to pay tax on the purchase turnover. The proviso added to the definition of turnover by the Hyderabad General Sales Tax (Amendment) Act, 1953, leaves the main portion of the definition intact and only says that certain things shall be excluded from a person's turnover. The main portion only refers to the turnover of a dealer and not of an agriculturist. The proviso deals with a person who is both an agriculturist and a dealer and it excludes the proceeds of the sale by him of his own agricultural produce from his turnover as a dealer in

goods. Under the Act tax is leviable on a sale either on the seller or on the buyer but not on both and under rule 5 (2) in the case of sale of groundnuts the buyer shall pay the tax provided he is a dealer. In respect of groundnuts tax is therefore payable by a dealer on his turnover of purchases of these goods. The seller of these goods, whether he is an agriculturist or not, is not, in any case, liable to pay tax. For the purposes of the Act an agriculturist, not being a dealer, has no turnover. That being so, no question of exemption of the transactions by an agriculturist from the liability to pay the tax arises. Section 11 authorises a dealer only to collect a tax payable under the Act and where no such tax is payable, a dealer has no right to collect anything under that section. Under the Act a dealer is liable to pay the tax and an agriculturist, not being a dealer, has no such liability and therefore no tax can be collected from the latter. Sales tax need not be an indirect tax and a tax can be a sales tax though the primary liability for it is put upon a person without giving him any power to recoup the amount of the tax payable from any other party.—*KONDURI BUCHIRAJALINGAM v. THE STATE OF HYDERABAD AND OTHERS* [1958] 9 S.T.C. 397 (S.C.).

—See also *M. N. GOBHAI & Co. v. THE STATE OF BOMBAY* [1957] 8 S.T.C. 575 (Bom) and *POKHARDAS MEGHRAJ v. THE STATE OF BOMBAY AND ANOTHER* [1957] 8 S.T.C. 758 (Bom.).

—*Tax on purchase of sugarcane for use, consumption or sale in factory—Validity of provisions.*—Under the Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1961, on the declaration of a factory zone for the purposes of supply of cane to a factory during a particular crushing season, the occupier of the factory was bound to purchase such quantity of cane grown in that area and offered for sale to that factory as might be determined by the Cane Commissioner. The Act prohibited the cane growers in a factory zone from supplying or selling cane to any factory or other persons otherwise than in accordance with the provisions of the Schedule to the Act. Under the Rules framed under that Act, the cane grower or a cane growers' co-operative society might, within 14 days of the order declaring an area as the factory zone or within the time extended by the Cane Commissioner, offer to supply cane grown in that area to the occupier of the factory, and the occupier of the factory was bound to enter into an agreement with the cane grower or the society for the purchase of the cane offered. The prescribed agreement provided that the occupier

of the factory agreed to buy and the cane grower or the co-operative society agreed to sell during the crushing season certain sugarcane crop grown in the area, and at the minimum price notified by the Government from time to time, upon the terms and conditions mentioned in the agreement. Contravention of the provisions of the Act or of any rule or order made under the Act was punishable. Section 21 of the Act, which imposed a tax on the purchase of sugarcane required for use, consumption or sale in a factory, provided as follows: "21(1) The Government may, by notification, levy a tax at such rate not exceeding five rupees per metric tonne as may be prescribed on the purchase of cane required for use, consumption or sale in a factory. (2) The Government may, by notification, remit in whole or in part such tax in respect of cane used or intended to be used in a factory for any purpose specified in such notification. (3) The Government may, by notification, exempt from the payment of tax under this section—(a) any new factory which, in the opinion of the Government has substantially expanded, to the extent of such expansion, for a period not exceeding two years from the date of completion of the expansion." "Factory" was defined by section 2(i) of the Act to mean "any premises, including the precincts thereof, wherein twenty or more workers are working or were working on any day during the preceding twelve months and in any part of which any manufacturing process connected with the production of sugar by means of vacuum pans is being carried on or is ordinarily carried on with the aid of mechanical power." In 1967 the following sub-section (1-A) was inserted in section 21: "(1-A) The Government may, by notification, levy a tax at such rate, not exceeding three rupees and fifty paise per metric tonne, as may be prescribed on the purchase of cane required for use, consumption or sale in a khandsari unit." The petitioners, who owned sugar factories and who purchased cane from cane growers within their respective factory zones, filed writ petitions in the Supreme Court challenging the levy under section 21 of tax on the purchase of cane required for use, consumption or sale in a factory as unconstitutional and *ultra vires*: *Held*, (i) that under the Act and the Rules framed thereunder, the cane grower in the factory zone was free to make or not to make an offer of sale of cane to the occupier of the factory. But if he made an offer, the occupier of the factory was bound to accept it. The resulting agreement was recorded in writing and was signed by the parties. The consent of the occupier of the factory to the agreement was not caused by

coercion, undue influence, fraud, misrepresentation or mistake. His consent was free as defined in section 14 of the Indian Contract Act though he was obliged by law to enter into the agreement. The compulsion of law was not coercion as defined in section 15 of the Act. In spite of the compulsion, the agreement was neither void nor voidable. In the eye of law, the agreement was freely made. The parties were competent to contract. The agreement was made for a lawful consideration and with a lawful object and was not void under any provisions of law. The agreements were enforceable by law and were contracts of sale of sugarcane as defined in section 4 of the Indian Sale of Goods Act. The purchases of sugarcane under the agreement could be taxed by the State Legislature under entry 54, List II, of Schedule VII, to the Constitution of India; (ii) that the State Legislature was competent to levy the tax with reference to the weight of the goods purchased. It was not necessary to levy the tax with reference to the price of the goods or to the turnover; (iii) that under entry 54, List II, of the Seventh Schedule to the Constitution of India, the State Legislature was not bound to levy a tax on all purchases of cane. It might levy a tax on purchases of cane for use, consumption or sale in a factory. The Legislature was competent to tax and also to exempt from payment of tax sales or purchases of goods required for specific purposes; (iv) that section 21 of the Act did not levy a use tax; (v) that the tax levied under section 21 was not a levy on the entry of goods into a factory for consumption, use or sale therein. The taxable event was the purchase of cane for use, consumption or sale in a factory and the tax levied under section 21 was not therefore a cess; (vi) that section 21 of the Act did not offend Article 301 of the Constitution as it did not impede the free flow of trade. Nor did the tax levied under section 21 discriminate between cane grown in the State and cane imported from outside the State; (vii) that the differential treatment of factories producing sugar by means of vacuum pans, khandsari units producing sugar by the open pan process, and cane growers using cane for the manufacture of jaggery, was reasonable and had a rational relation to the object of taxation. There were marked differences between the three classes of users of cane and their capacity to pay the tax. The Legislature could reasonably treat the three sets of users of cane differently for purposes of levy; (viii) that the power under section 21(3) to exempt new factories and factories which in the opinion of the Government had substantially expanded was not discriminatory

or violative of Article 14. The establishment of new factories and the expansion of existing factories needed encouragement and incentives. The exemption in favour of new and expanding factories was based on legitimate legislative policy. The question whether the exemption should be granted to any factory, and if so, for what period and the question whether any factory had substantially expanded and, if so, the extent of such expansion had to be decided with reference to the facts of each individual case. Obviously, it was not possible for the State Legislature to examine the merits of individual cases and the function was properly delegated to the State Government. The Legislature was not obliged to prescribe a more rigid standard for the guidance of the Government. *New India Sugar Mills Ltd. v. Commissioner of Sales Tax* [1963] (14 S.T.C. 316) distinguished. *C. G. Naidu and Co. v. State of Madras* [1952] (3 S.T.C. 405; A.I.R. 1953 Mad. 116) disapproved. *State of Madras v. Gannon Dunkerley and Co. (Madras) Ltd.* [1958] (9 S.T.C. 353) explained.—*THE ANDHRA SUGARS LTD. AND ANOTHER v. THE STATE OF ANDHRA PRADESH AND OTHERS* [1968] 21 S.T.C. 212 (S.C.).

Power to enlarge the meaning of the words “sale of goods”.—The State Legislature has not the power to enlarge the meaning of the words “sale of goods” by going beyond the meaning attached to it by its definition in the Sale of Goods Act, 1930, because it is in that sense that these words were used in item 48 of Schedule VII of the Constitution Act, 1935.—*THE INSTALMENT SUPPLY LIMITED v. THE STATE OF DELHI AND OTHERS* [1956] 7 S.T.C. 586 (Punj.).

—The expression “sale of goods” in entry 48 in List II of Schedule VII of the Government of India Act, 1935, cannot be construed in its popular sense but must be interpreted in its legal sense and should be given the same meaning which it has in the Sale of Goods Act, 1930. It is a *nomen juris*, its essential ingredients being an agreement to sell movables for a price and property passing therein pursuant to that agreement. In order to constitute a sale it is necessary that there should be an agreement between the parties for the purpose of transferring title to goods, which presupposes capacity to contract, that it must be supported by money consideration, and that as a result of the transaction property must actually pass in the goods. Unless all these elements are present, there can be no sale. Thus, if merely title to the goods passes but not as a result of any contract between the parties, express or implied, there is no sale. So also if the consideration for the transfer is not money but other valuable

consideration, it may then be exchange or barter but not a sale. And if under the contract of sale, title to the goods has not passed, then there is an agreement to sell and not a completed sale. Moreover under the law there cannot be an agreement relating to one kind of property and a sale as regards another. There must be an agreement between the parties for the sale of the very goods in which eventually property passes. The Madras General Sales Tax Act is a law relating not to sale of goods but to tax on sale of goods, and it is not one of the matters enumerated in the Concurrent List of Schedule VII of the Government of India Act, 1935, or over which the Dominion Legislature is competent to enact a law, but is a matter within the exclusive competence of the Province under entry 48 in List II. The only question that can arise with reference to such a law is whether it is within the purview of that entry and as it is so, no question of repugnancy under section 107 can arise.—*THE STATE OF MADRAS v. GANNON DUNKERLEY & CO. (MADRAS) LTD.* [1958] 9 S.T.C. 353 (S.C.).

—A State Legislature cannot enlarge its powers of taxation by including within the scope of the expression “sale of goods” anything that was not intended to be included by the framers of the Constitution. Although entry 54 authorised levy of tax not only on the sale of goods but also on the purchase of goods, as purchase is no more than a phase or a facet of the sale transaction, the power of the State Legislature under the Constitution of India, 1950, has not been enlarged. The expression “sale or purchase of goods” in the entry would require a transaction whereby the property in the goods is actually transferred by the seller to the buyer for a price. Such use as is contemplated by the second proviso to section 2(12) of the Assam Sales Tax Act, 1947, does not fall within the purview of the expression “sale of goods”. The second proviso to section 2(12) which provided that, “any use by a dealer from his stock of any goods liable to tax under the Act shall be deemed to be a sale”, transgressed the constitutional powers conferred on the State Legislature by entry 54 of List II of the Seventh Schedule of the Constitution and was therefore *ultra vires* the State Legislature. *PER SARJOO PROSAD, C.J.*—The expression “any goods liable to tax under the Act” in the second proviso to section 2(12) has reference to the goods in which the dealer is authorised to deal as entered in his registration certificate and not any other commodity.—*BEHUBAR CO., LTD. v. COMMISSIONER OF TAXES, ASSAM, AND OTHERS* [1957] 8 S.T.C. 417 (Assam).

—The expression “sale of goods” occurring in entry 54 of List II of Schedule VII of the Constitution is a composite expression having a definite meaning involving the existence of all the elements required to constitute a valid sale and there can be no sale of goods unless all the component elements are present. It will not be open to the Legislature to make a transaction which is not a sale, a sale by a statutory fiction and impose a tax thereon. If therefore the element of transfer of property is lacking in any transaction, there can be no sale and the Legislature cannot by treating it as a sale by a deeming clause proceed to bring it within the ambit of the taxing statute. The Explanations to sections 2(g) and 2(n) of the Madras General Sales Tax Act, 1959, are *ultra vires* of the State Legislature for the reason that they enable the State Legislature to tax transactions which are not really sales and, therefore, fall outside the ambit of its legislative power under the Constitution. The Explanations create a fiction by which the concept of the word “sale” is extended so as to include a transaction which properly speaking would not amount to sale. A members’ club holds a recognised position under the law. Whether such a club is incorporated or unincorporated, it exists and performs duties only for the benefit of the members. Its activity in regard to that matter may be an organised one, but all of them will be for the benefit of the members. In the case of an unincorporated club the supply of articles and refreshments by the club to one of its members is not a sale but a release by all the members in favour of a joint owner who takes the goods. In the case of an incorporated club, which exists only for the purpose of providing amenities to its members, so long as no outsider has an interest in it, there is an identity of interest between the club and the members. In such a case the supply of articles by it to a member will tantamount to delivery by an agent or trustee to the principal or beneficiary and there can be no transfer of ownership by a person absolutely entitled to the property to the one who acquires title to the property on such transfer. Ordinarily speaking there can be no limit to the creation of a fiction in a statute by a Sovereign Parliament. But where the legislative authority is limited or circumscribed by the Constitution, a fiction which has the effect of extending the scope of an enactment so as to transgress the constitutional limits must be invalid, for no Legislature can do that by enacting a fiction which it cannot do directly.—**YOUNG MEN’S INDIAN ASSOCIATION (REGD.)**, MADRAS, AND ANOTHER *v.* JOINT

COMMERCIAL TAX OFFICER, HARBOUR DIVISION II, MADRAS, AND ANOTHER [1963] 14 S.T.C. 1030 (Mad.).

—*Per* KAPUR and SHAH, JJ.—The power conferred by entry 48, List II, Schedule VII, of the Government of India Act, 1935, was restricted to enacting legislation imposing tax liability in respect of sale of goods as understood in the Sale of Goods Act, 1930, and the Provincial Legislature under the Government of India Act, 1935, had no power to tax a transaction which was not a sale of goods as understood in the Sale of Goods Act, 1930. According to section 4 of the Sale of Goods Act, to constitute a sale of goods, property in the goods must be transferred from the seller to the buyer under a contract of sale. A contract of sale between the parties is therefore a prerequisite to a sale and it postulates exercise of volition on the part of the contracting parties. As the Bihar Legislature had under the Government of India Act, 1935, no power to legislate in respect of taxation of transactions other than those of a sale of goods as understood in the Sale of Goods Act, 1930, a transaction to be liable to pay sales tax, had to conform to the requirements of the Sale of Goods Act, 1930. Attributing a literal meaning to the words “sale of goods” would amount to imputing to the Legislature an intention deliberately to transgress the restrictions imposed by the Constitution Act upon the Provincial Legislative authority. Therefore in the definition of the expression “sale” in section 2(g) of the Bihar Sales Tax Act, 1947, it must be regarded as implicit that the transaction has all the elements which constitute a sale within the meaning of the Sale of Goods Act. It is a recognised rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the Legislature. If an expression is susceptible of a narrow or technical meaning, as well as a popular meaning, the Court would be justified in assuming that the Legislature used the expression in the sense which would carry out its object and reject that which renders the exercise of its powers invalid. The assesseees were manufacturers of sugar in Bihar and they despatched large quantities of sugar to different States in compliance with the directions issued by the Controller exercising powers under the Sugar and Sugar Products Control Order, 1946. The course of dealing between the parties was that the various State Governments intimated to the Sugar Controller their requirement of sugar and similarly the factory owners sent to the

Sugar Controller the statements of stocks of sugar held by them. After considering the requirements and the statements, the Sugar Controller made the allotments. In each case, the allotment order was addressed to the factory owner, directing him to supply sugar to the State Government in accordance with the despatch instructions received from the competent officer of the State Government. A copy of the allotment order was simultaneously sent to the State Government, on receipt of which the competent authority of the State Government sent to the factory concerned detailed instructions about the destinations to which the sugar was to be despatched as also the quantities of sugar to be despatched to each place. On the question whether the despatches of sugar to the State of Madras by the assesseees were liable to be taxed under the Bihar Sales Tax Act, 1947: *Held*, by the majority (KAPUR and SHAH, JJ., HIDAYATULLAH, J., dissenting) that the despatches of sugar by the assesseees pursuant to the directions of the Sugar Controller were not the result of any contract of sale and therefore there was no sale and the assesseees were not liable to pay sales tax on the amount received from them from the State of Madras for sugar supplied. *Per* HIDAYATULLAH, J.—Entry 48, List II, Schedule VII, of the Government of India Act, 1935, should be interpreted in a liberal spirit and not cut down by narrow technical considerations. The entry should not be shorn of all its content to leave a mere husk of legislative power. For the purpose of legislation such as on sales tax, it is only necessary to see whether there is a sale express or implied. The entry has its meaning and within its meaning there is a plenary power. If a sale express or implied is found to exist then the tax must follow. In the present case, there was a sale of sugar for a price and tax was therefore payable. Decision of the Patna High Court in *Commissioner of Sales Tax, Bihar v. New India Sugar Mills, Darbhanga* [1959] (10 S.T.C. 74) reversed.—*NEW INDIA SUGAR MILLS LTD. v. COMMISSIONER OF SALES TAX, BIHAR* [1963] 14 S.T.C. 316 (S.C.).

—Consumption by an owner of goods in which he deals is not a “sale” within the meaning of the Indian Sale of Goods Act, 1930, and therefore it is not “sale of goods” within the meaning of entry 54, List II, Schedule VII, of the Constitution of India. The legislative power for levying tax on sale of goods being restricted to enacting legislation for levying tax on transactions which conform to the definition of “sale of goods” within the meaning of the Indian Sale of Goods

Act, 1930, the extended definition of “retail sale” in section 2(1) of the Madhya Pradesh Sales of Motor Spirit and Lubricants Taxation Act, 1958, which includes “consumption by a retail dealer himself or on his behalf of motor spirit or lubricants sold to him for retail sale” is beyond the competence of the State Legislature. But that clause is severable from the rest of the definition and therefore it is alone invalid. *State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd.* ([1959] S.C.R. 379; 9 S.T.C. 353) followed.—*BHOPAL SUGAR INDUSTRIES LTD., M.P., AND ANOTHER v. D. P. DUBE, SALES TAX OFFICER, BHOPAL REGION, BHOPAL, AND ANOTHER* [1963] 14 S.T.C. 406 (S.C.).

—*Validity of provision making it obligatory for dealers to pay unlawful collections to Government—Sections 11(2) and 20(e), Hyderabad Act—Whether ultra vires State Legislature.*—Section 11(2) of the Hyderabad General Sales Tax Act, 1950, which laid down that any amount collected by way of tax by any person otherwise than in accordance with the provisions of the Act must be paid over to the Government and in default of such payment, the said amount would be recovered from such person as if it were arrears of land revenue, was not within the competence of the State Legislature under entry 54 of List II of Schedule VII of the Constitution. The provisions of section 20(c), being consequential to section 11(2), would also fall along with it. Section 11(2) could not be justified even as an incidental or ancillary provision permitted under entry 54 of List II. It also did not fall under entry 26 of List II, because there was no element of regulation of trade and commerce in it. If a dealer has collected anything from a purchaser which is not authorised by the taxing law, that is a matter between him and the purchaser, and the purchaser may be entitled to recover the amount from the dealer. But unless the money so collected is due as a tax, the State cannot by law make it recoverable simply because it has been wrongly collected by the dealer. This cannot be done directly for it is not a tax at all within the meaning of entry 54 of List II, nor can the State Legislature under the guise of incidental or ancillary power do indirectly what it cannot do directly. *Orient Paper Mills Limited v. The State of Orissa* ([1962] 1 S.C.R. 549; 12 S.T.C. 357) distinguished; *State of Bombay v. United Motors (India) Limited* ([1953] S.C.R. 1069; 4 S.T.C. 133) referred to; *Indian Aluminium Co. v. The State of Madras* [1962] (13 S.T.C. 967) overruled.—*R. ABDUL QUADER AND CO. v. SALES TAX OFFICER, SECOND CIRCLE, HYDERABAD* [1964] 15 S.T.C. 403 (S.C.).

—The power conferred on the State Legislature by entry 54 in List II of the Constitution can be exercised only when there is a sale by which there is a transfer of ownership of property and does not extend to tax transactions which do not constitute sales as understood either in the Indian Sale of Goods Act, 1930, or under the General Sales Tax Acts. Therefore the content of the expression “sale” is not enlarged by Explanation III to section 2(n) of the Andhra Pradesh General Sales Tax Act, 1957. The expression “goods are transferred” in that explanation is not intended to convey the idea of delivery only without transfer of ownership. The respondents were carrying on business as commission agents. Agriculturists who manufactured jaggery from sugar-cane grown by them entrusted the jaggery to the respondents for sale on commission. The respondents sorted out the jaggery into different qualities, piled it up into heaps according to the quality and auctioned the heaps of jaggery in the presence of their principals or someone on their behalf. The respondents prepared the bills indicating the quality of the jaggery, the price and the total consideration and issued them to their principals. Out of the sale price, the respondents made certain deductions towards commission, *gumasta rusum* and *kolagaram*. The pattis furnished to the principals made no reference either to the *kolagaram*, *dharmam*, *vattar* and sales tax. The bills issued to the purchasers stated that the sales tax collected from them would be made over to the Government, and in most of the cases was paid to the Government. As jaggery was liable to sales tax only at the stage of the first sale in the State, the respondents contended that they were not liable to pay sales tax on the jaggery sold by them inasmuch as under Explanation III to section 2(n), a sale must be deemed to have taken place even at the time when the principals delivered their goods to the respondents: *Held*, that the first sale was effected by the respondents and not by the principals and therefore the respondents were liable to pay the tax. An explanation does not enlarge the scope of the original section. The principle of harmonious construction requires that an explanation cannot be read in a way inconsistent with the content of the main section. If a provision is capable of two constructions, that which is in consonance with its constitutionality should be adopted in preference to that which results in its being struck down as *ultra vires* or unconstitutional.—THE STATE OF ANDHRA PRADESH v. T.R. SOMARAJU AND OTHERS [1965] 16 S.T.C. 177 (A.P.).

—The power of the State to tax sales of goods is not restricted to sales which are in the course of trade or business with a profit motive. That power will include the power to tax sales of goods of all description so long as they satisfy the definition of “sale” in the Sale of Goods Act, 1930. Therefore there is nothing illegal or *ultra vires* the State Legislature in excluding the profit motive when it amended the definition of “business” in the Madras General Sales Tax Act, 1959, by the amending Act 15 of 1964. Section 9 of the amending Act 15 of 1964 has validated the levy of tax on the sales effected in 1959-60 in the canteen run by the Southern Railway Workshop for its workers on a non-profit basis under the provisions of the Factories Act, 1948. The expression “trade or commerce” need not necessarily connote a profit motive, though ordinarily such a motive will exist when a trade is practised as a means of livelihood or gain. In interpreting the terms of a statute, every part of it should be given weight, and the Court should attempt to give a harmonious interpretation to all the provisions in the statute, to the extent that it is reasonably possible, before striking down any portion of the statute as invalid.—SOUTHERN RAILWAY EMPLOYEES’ WORKSHOP CANTEEN v. THE DEPUTY COMMERCIAL TAX OFFICER, TIRUCHIRAPALLI TOWN IV, AND ANOTHER [1965] 16 S.T.C. 187 (Mad.).

—SHAH and SIKRI, JJ.—Although in the execution of a contract for work some materials are used and property in the goods so used passes to the other party, the contractor undertaking the work will not necessarily be deemed, on that account, to sell the materials. A contract for work in the execution of which goods are used may take one of three forms. The contract may be for work to be done for remuneration and for supply of materials used in the execution of the works for a price; it may be a contract for work in which the use of materials is accessory or incidental to the execution of the work; or it may be a contract for work and use or supply of materials, though not accessory to the execution of the contract, is voluntary or gratuitous. In the last class there is no sale because though property passes it does not pass for a price. Whether a contract is of the first or the second class must depend upon the circumstances; if it is of the first, it is a composite contract for work and sale of goods; where it is of the second category, it is a contract for execution of work not involving sale of goods. In order that there should be a sale of goods which is liable to sales tax as part of a contract for work under a statute

enacted by the Provincial or State Legislature, there must be a contract in which there is not merely transfer of title to goods as an incident of the contract, but there must be a contract, express or implied, for sale of the very goods which the parties intended should be sold for a money consideration, i.e., there must be in the contract for work an independent term for sale of goods by one party to the other for a money consideration. In business transactions the works contracts are frequently not recorded in writing setting out all the covenants and conditions thereof, and the terms and incidents of the contracts have to be gathered from the evidence and attendant circumstances. The question in each case is one about the true agreement between the parties and the terms of the agreement must be deduced from a review of all the attendant circumstances. But from the mere passing of title to goods either as integral part of or independent of goods it cannot be inferred that the goods were agreed to be sold, and the price is liable to sales tax. Whether a contract for service or for execution of work involves a taxable sale of goods must be decided on the facts and circumstances of the case. The burden in such a case lies upon the taxing authorities to show that there was a taxable sale, and that burden is not discharged by merely showing that property in the goods which belonged to the party performing service or executing the contract stands transferred to the other party. The assessee-company was a dealer carrying on the business of re-drying in its factory raw tobacco entrusted to it by its customers. The assessee re-dried the tobacco, packed it in packing materials purchased from the market and delivered it to the customers. For re-drying each bale of tobacco the assessee charged the customers a certain sum but there was no separate charge for the value of the packing materials used. The assessee was assessed to sales tax under the Madras General Sales Tax Act, 1939, on the value of the packing materials on the ground that there was a sale of the packing materials. The High Court found that the packing of the re-dried tobacco and its storage for the requisite period was an integral part of the re-drying process and held that there was no sale of the packing materials. On appeal to the Supreme Court: *Held*, by the majority (SHAH and SIKRI, JJ.; SUBBA RAO, J., dissenting), on the finding recorded by the High Court, that it was intended by the parties that the "packing material" should form an integral part of the process of re-drying and without the use of the "packing material" re-drying process could not be completed, and that there was no independent

contract for sale of "packing material". It was only as an incident of the re-drying process and as a part thereof that the assessee had to seal up the package of tobacco, after it emerged from the reconditioning chamber, with a view to protect it against atmospheric action. In the absence of any evidence from which contract to sell "packing material" for a price might be inferred, the use of "packing material" by the assessee must be regarded as in execution of the works contract and the fact that the tobacco delivered by the constituent was taken away with the "packing material" would not justify an inference that there was an intention to sell the "packing material". SUBBA RAO, J.—All the ingredients of the charging section read with the definition of "sale" were satisfied. Unless it could be said that the material used for packing was transformed into some other commodity not covered by the definition of "goods", it could not be held that there was no sale of the material. The packing material remained distinct from the dried tobacco. Property in it passed to the customer, who had paid for it. On the basis of the practice obtaining in the factory of the assessee, contracts of sale arose easily by implication and therefore the Sales Tax Authorities had rightly assessed the turnover in regard to the packing materials. Decision of the High Court of Andhra Pradesh in *The Guntur Tobaccos Ltd., Guntur v. The Government of Andhra (Now Andhra Pradesh)* [1961] (12 S.T.C. 668) affirmed.—THE GOVERNMENT OF ANDHRA PRADESH *v.* GUNTUR TOBACCOS LTD. [1965] 16 S.T.C. 240 (S.C.).

—See also HYDERABAD DECCAN CIGARETTE FACTORY *v.* THE STATE OF ANDHRA PRADESH [1966] 17 S.T.C. 624 (S.C.).

—The allotment of goods of a firm amongst the partners on the dissolution of the firm did not constitute sale of goods within the meaning of the Indian Sale of Goods Act, 1930, and section 26(3) of the Bombay Sales Tax Act, 1953, in so far as it purported to bring such allotment to tax by fictionally treating it as a sale, did not fall expressly within the subject of legislation contained in entry 54 in List II of the Seventh Schedule to the Constitution. In enacting section 26(3) what the Legislature did was not to enact an ancillary or subsidiary provision intended to ensure the proper and effective functioning of the main legislation but to directly and expressly bring to tax a transaction which was not a sale within the meaning of the Indian Sale of Goods Act by fictionally treating it as such sale. This was constitutionally impermissible to the State Legislature. Therefore section 26(3), in so far as it purported to tax

allotment of goods of a firm amongst partners on dissolution, was *ultra vires* the State Legislature. When the residue of the property of the firm after payment of debts and liabilities and settlement of accounts is divided amongst the partners in specie no money consideration can be said to have been promised or paid by any partner to the firm or for the matter of that to the other partners as consideration for the goods allotted to him. Consideration undoubtedly there would be, for the partner to whom any particular goods are allotted on distribution would be giving up his interest in the goods allotted to the other partners in consideration of the other partners giving up their respective interests in the goods allotted to such partner. But such consideration can by no stretch of imagination be called a money consideration. If section 26(3) was a valid piece of legislation, it had clearly the effect of converting allotment of goods of the firm amongst the partners on dissolution into sale for all purposes of taxation and such allotment was liable to be included in the taxable turnover of the firm. When a statute enacts that something shall be deemed to have been done which in fact and truth was not done, the Court is entitled and bound to ascertain for what purpose and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion.—*STATE OF GUJARAT v. RAMANLAL SANKALCHAND AND Co.* [1965] 16 S.T.C. 329 (Guj.).

—The supply of bricks to consumers who obtained permits for such supply under the Punjab Control of Bricks Supplies Order, 1956, issued under section 3 of the East Punjab Control of Bricks Supplies Act, 1949, could not be regarded as sales within the meaning of clause (h) of section 2 of the Punjab General Sales Tax Act, 1948. Principle laid down in the majority judgment of the Supreme Court in *New India Sugar Mills Ltd. v. Commissioner of Sales Tax, Bihar* [1963] (14 S.T.C. 316; A.I.R. 1963 S.C. 1207) applied.—*JASWANT SINGH v. THE EXCISE AND TAXATION OFFICER (ASSESSING AUTHORITY), HISSAR, AND ANOTHER* [1967] 19 S.T.C. 297 (Punj. & Haryana).

—Under the Iron and Steel (Control of Production and Distribution) Order, 1941, subject to certain restrictions, a seller and a purchaser of iron and steel are given the liberty of entering into a bargain of purchase and sale introducing thereunder such terms of business as will not override the conditions laid down by the Controller. Such transactions contain the essential prerequisites of sales, namely, agreements to

enter into sales followed by the transfer of property as a result of the payment of the prices. Merely because the Controller has large powers of controlling or regulating the procedure to be adopted where one party requires iron and steel goods and another party has to supply them it cannot be said that there is such an absence of volition on the part of the parties that the transaction cannot be called a sale of goods within the meaning of the Sale of Goods Act, 1930. The limitation as to the price or as to the quantity which a purchaser can acquire from a producer or even the want of choice as to the person from whom a purchaser is allowed to acquire the goods does not take away from the essential requisites of an agreement for sale followed by transfer of property in pursuance thereof on payment of the price. Such transactions are therefore sales within the meaning of the Bengal Finance (Sales Tax) Act, 1941. *New India Sugar Mills Limited v. Commissioner of Sales Tax, Bihar* [1963] (14 S.T.C. 316) distinguished. Decision of Sinha, J., reversed.—*STATE OF WEST BENGAL v. INDIAN STEEL AND WIRE PRODUCTS LTD. AND ANOTHER* [1967] 19 S.T.C. 319 (Cal.).

—The appellant supplied steel products to various persons in the State of Madras during the period April 1, 1953, to September 6, 1955. The sale or purchase of iron and steel products was throughout that period controlled by the Iron and Steel (Control of Production and Distribution) Order, 1941, issued under the Defence of India Act, 1939, which was administered by the Iron and Steel Controller in Calcutta. The procedure adopted was that the purchaser placed the order for materials according to the specifications given by him through the Iron and Steel Controller, the purchaser agreeing that the indent was placed subject to the provisions of the sale price schedule regarding prices etc., and the terms and conditions of business (including payment) of the registered producer (in this case, the appellant) on whom the order would be placed by the Iron and Steel Controller. The indent was forwarded to the appellant for delivery of the material in accordance with any general or special directions of the Iron and Steel Controller. There was no evidence regarding any general or special order issued by the Controller excepting that fixing the base price. The works order issued by the appellant provided that all orders booked were subject to the appellant's terms of business and general understanding in force at the time of booking the orders and despatch of goods. It was left to the appellant to supply the goods ordered at its convenience and the buyers were willing to change by mutual

agreement even the specifications of the goods to be supplied. It was open to the appellant to fix the time and mode of payment of the price of the goods supplied. The question was whether the transactions resulting in the supply of the steel products to persons in the Madras State amounted to sales and were liable to sales tax: *Held*, (i) that the transactions were sales attracting liability to sales tax; (ii) that there was material before the Tribunal to come to the conclusion that the goods were delivered in the State of Madras for consumption. It would be incorrect to say that because law imposes some restrictions on freedom to contract, there is no contract at all. So long as mutual assent is not completely excluded in any dealing, in law it is a contract. As laid down by the Supreme Court in *State of Madras v. Gannon Dunkerley and Co. (Madras) Ltd.* ([1958] 9 S.T.C. 353; [1959] S.C.R. 379) to constitute a valid sale there has to be concurrence of the following elements, *viz.*, (i) parties competent to contract, (ii) mutual assent, (iii) a thing the absolute or general property in which was transferred from the seller to the buyer, and (iv) a price in money paid or promised. Of these, three elements were established in the present case, *viz.*, the parties were competent to contract, the property in the goods was transferred from the appellant to the buyers, and the price in money was paid. There were several matters which the parties could decide by mutual consent. The Controller only fixed the base price of the steel products and determined the buyers; but in other respects the parties were free to decide their own terms by consent. *New India Sugar Mills Ltd. v. Commissioner of Sales Tax, Bihar* [1963] (14 S.T.C. 316; [1963] Supp. 2 S.C.R. 459) distinguished. Decision of the Madras High Court affirmed.—*THE INDIAN STEEL & WIRE PRODUCTS LTD. v. THE STATE OF MADRAS* [1968] 21 S.T.C. 138 (S.C.).

—The definition of “sale” in the U.P. Sales Tax Act, 1948, must be construed in the sense which it has in the Sale of Goods Act, 1930. The words “other valuable consideration” in sec. 2(h) of the U.P. Sales Tax Act, 1948, must be interpreted on the basis of the rule of *ejusdem generis* to mean cheques, bills of exchange or any such other negotiable instruments. They cannot cover a case where no price is paid and the transaction is merely one of exchange or barter. Therefore the giving of bullion and making charges by a dealer in bullion and ornaments in exchange for ready-made ornaments manufactured by goldsmiths is not a “sale of bullion” within the meaning of the U.P. Sales Tax Act, 1948, but is only a barter or exchange transaction and

therefore not liable to be taxed. *MANCHANDA, J.*—The words “other valuable consideration” which occur in section 2(h) and which do not find a place in the definition of “sale” in the Sale of Goods Act, 1930, must be held to be *ultra vires* the Provincial or State Legislature. *BEG, J.*—The constitutional validity of any provision in the Sales Tax Act cannot be canvassed on a reference to the High Court under section 11 of the Act. Nevertheless, in deciding which of the two possible constructions of a legislative provision is to be adopted, the Court should prefer an interpretation which, while it is reasonably acceptable, also avoids constitutional invalidity. *State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd.* [1958] (9 S.T.C. 353) followed.—*SALES TAX COMMISSIONER, U.P. v. RAM KUMAR AGARWAL* [1967] 19 S.T.C. 400 (All.).

—The real effect of Explanation III to section 2(1)(n) of the Andhra Pradesh General Sales Tax Act, 1957, is to impose tax only when there is a transfer of title to the goods and not where there is a mere contract of agency. The Explanation says in effect that when there is in reality a transfer of property by the principal to the agent and by the agent in his turn to the buyer, there are two transactions of sale. The phrase “when the goods are transferred” in clauses (1) and (2) of Explanation III means “when title to the goods is transferred” and so construed it does not enlarge the scope of the main definition of “sale” in section 2(1)(n). The question as to whether the transactions in any given case are sales or contracts of agency is a mixed question of fact and law and must be investigated with reference to the material which the dealer might be able to place before the appropriate authority. The question is not one which can properly be determined in an application for a writ under Article 226 of the Constitution. Decision of the Andhra Pradesh High Court affirmed.—*SRI TIRUMALA VENKATESWARA TIMBER AND BAMBOO FIRM v. COMMERCIAL TAX OFFICER, RAJAHMUNDRY* [1968] 21 S.T.C. 312 (S.C.).

—See also cases digested under CLUB, HIRE-PURCHASE AGREEMENT and SALES TAX.

Power to impose tax with retrospective effect.—From the point of view of the economist and as an economic theory, sales tax may be an indirect tax on the consumers, but legally it need not be so. Under the 1947 Act the primary liability to pay the sales tax, so far as the State is concerned, is on the seller. The circumstance that the 1947 Act, after the amendment, permitted the seller who was a registered dealer to collect the sales tax as a tax from the purchaser does not do away with the primary liability of

the seller to pay the sales tax. Consequently the Bihar Legislature could impose sales tax prospectively as well as retrospectively.—THE TATA IRON & STEEL CO., LTD. *v.* THE STATE OF BIHAR [1958] 9 S.T.C. 267 (S.C.).

—The Bihar Legislature is competent to enact fiscal legislation either with prospective or with retrospective effect, and there is nothing in the Government of India Act, 1935, or in the Constitution of India, 1950, which militates against this view. Consequently the provisions of the Bihar Sales Tax (Amendment) Act (Bihar Act VI of 1949) giving retrospective effect to the enhanced rate of tax with effect from the 1st of October, 1948, were constitutionally valid.—ROHTAS INDUSTRIES LTD. *v.* THE STATE OF BIHAR [1956] 7 S.T.C. 391 (Pat.).

—Articles 245 and 246 of the Constitution read with item 54 of List II of Schedule VII in respect of tax on sale or purchase of goods vest power in the State Legislatures to enact laws without imposing any limitation or restriction in regard to their being enacted retroactively. The Legislatures within the spheres allocated to them are supreme, subject to the constitutional limitations. While the Courts are averse to construing a statute, particularly a taxing statute, so as to give a retrospective effect unless express words or necessary intendment compel them to do so, none the less this rule of construction cannot be confused with a constitutional limitation imposing a fetter on the power of the Legislature to enact retrospective law. The assumption that the dealer is merely the agent for collection of tax from the consumer and that tax cannot therefore be levied on him retrospectively is not correct. The liability to pay tax under the taxing section is on the dealer and it is immaterial whether he collects any tax or not from the consumer. The policy of taxation is more appropriately the province of the statesmen and of the Legislature rather than of the lawyer or the Courts. It is a public policy dependent not only upon the necessities of administration but also implementation of the schemes to serve the public needs. If in the exercise of the general policy of taxation each of the units of the federation is empowered to tax on the several items assigned to it respectively the heaviness of the burden upon an individual, unless it exceeds the constitutional limits, cannot be questioned. *Prima facie* taxation cannot be said to be an abridgement of the fundamental rights. If, however, the pith and substance of the legislation is such, that the taxes imposed are prohibitive or have the effect of imposing restrictions which are unreasonable and cannot be justified under

clause (6) of Article 19, they can be successfully questioned as being unconstitutional.—PITHAPURAM TALUK TOBACCO CIGARS AND SODA MERCHANTS' UNION *v.* THE STATE OF ANDHRA PRADESH [1958] 9 S.T.C. 723 (A.P.).

—See also ADARSH BHANDAR *v.* SALES TAX OFFICER, ALIGARH [1957] 8 S.T.C. 666 (All.) and V. GURUVIAH NAIDU *v.* THE STATE OF MADRAS [1958] 9 S.T.C. 145 (Mad.).

—Where the transaction is one of sale of goods as known to law, the power of the State to impose a tax thereon is plenary and unrestricted subject only to any limitation which the Constitution might impose, and in the exercise of that power, it will be competent to the Legislature to impose a tax on sale which had taken place prior to the enactment of the legislation.—J. K. JUTE MILLS CO. LTD. *v.* STATE OF UTTAR PRADESH [1961] 12 S.T.C. 429 (S.C.).

—The Court has the power and indeed it is its duty to strike down a fiscal legislation to be unconstitutional on the ground that its retrospective operation is unreasonable and offends the guarantee under Article 19(1). But it is neither possible nor wise to generalise what may constitute or be considered as unreasonable, as, in the nature of things, it is closely related to a variety of circumstances and the context. Any retrospective taxation is not by itself unreasonable. The inhibition of *ex post facto* laws does not apply to imposition of taxes by retrospective legislation. But if the retrospectivity is in its effect confiscatory or operates as a cloak of an oblique legislative purpose removed from ostensible tax considerations, or so totally oppressive as might destroy the very source of taxation, it may be regarded as unreasonable. After the decision of the Madras High Court in *Burmah Shell Co., Ltd. v. State of Madras* [1968] (21 S.T.C. 227), the enactment by the Madras Legislature of the Madras General Sales Tax (Third Amendment) Act, 1967, retrospectively imposing a single point tax on furnace oil and other non-lubricating oils and validating the levies prior to 5th January, 1968, involving refusal of refund is not *ultra vires* the Legislature. It cannot be said that the Amendment Act is confiscatory in character or so oppressive or burdensome as to hold that it is unreasonable or unconstitutional.—KRISHNAMURTHI AND COMPANY AND OTHERS *v.* THE STATE OF MADRAS AND OTHERS [1969] (23 S.T.C. 1) (Mad.).

—The State Legislature is free to enact laws which would have retrospective operation. Its competence to make a law for a certain past period depends on its present legislative power and not on what it possessed at the period of

time when its enactment is to have operation.—*A. HAJEE ABDUL SHUKOOR AND CO. v. THE STATE OF MADRAS* [1964] 15 S.T.C. 719 (S.C.).

Power to enact laws having retrospective effect prior to date when Legislature comes into existence—The validity of the Punjab General Sales Tax (Haryana Amendment and Validation) Act, 1967, was challenged, *inter alia*, on the following grounds: (1) A Legislature has no power to enact a law which has a retrospective effect prior to the date when it came into existence and therefore the Amending Act, in so far as it made a law for recovery of sales tax for the period prior to 1st November, 1966, was *ultra vires* its powers; (2) The Amending Act suffered from the vice of discrimination inasmuch as for the period prior to 1st November, 1966, there was no similar enactment for the Union territory of Chandigarh or for the Transferred Territories; (3) The illegality on the basis of which the Supreme Court quashed the assessments in *Bhawani Cotton Mills Ltd. v. The State of Punjab and Another* [1967] (20 S.T.C. 290) still persisted: *Held*, that the Punjab General Sales Tax (Haryana Amendment and Validation) Act, 1967, was not invalid on any of these grounds. A State Legislature is free to enact laws which would have retrospective operation. Its competence to make a law for a certain past period depends on its present legislative power and not on what it possessed at the period of time when its enactment is to have operation. *Firm A. T. B. Mehtab Majid and Co. v. State of Madras* [1963] (14 S.T.C. 355) distinguished. *State of Madras v. N. K. Nataraja Mudaliar*; [1968] (22 S.T.C. 376) followed: *East India Sandal Oil Distilleries Ltd. v. The State of Andhra Pradesh* [1962] (13 S.T.C. 79) approved.—*SHRI LAXMI COTTON TRADERS PVT. LTD., HANSI v. THE STATE OF HARYANA AND ANOTHER* [1968] 22 S.T.C. 335 (Punj. & Har.).

Power to impose surcharge on sales tax—*Validity of Surcharge on Taxes Act, 1957 (Kerala)*.—The object of the Surcharge on Taxes Act, 1957, as is clear from the preamble, is only to increase the tax on the sale or purchase of goods and the fact that its quantum is determined with reference to the sales tax imposed would not alter its character. The surcharge is really an enhancement of the sales tax when the turnover of the dealer exceeds Rs. 30,000 a year and is a tax on the aggregate of sales effected by the dealer during the year. It is not a tax on tax but is a tax on the sale of goods coming within Entry 54 in List II of Schedule VII of the Constitution of India. A tax can be a tax on the sale of goods though the primary liability for the same is placed upon the dealer without giving him an

opportunity to recoup the same from the consumer. Sales tax charged by a dealer is really a part of the price of the articles sold by him. Even if there was no previous recommendation by the Governor for introducing the Kerala Surcharge on Taxes Bill in the Legislature that would not invalidate the Act, because his subsequent assent to the Bill cured the defect arising out of the want of previous recommendation by him. *Konduri Buchirajalingam v. State of Hyderabad* [1958] (9 S.T.C. 397), *Tata Iron & Steel Co. Ltd. v. The State of Bihar* [1958] (9 S.T.C. 267), *Government of Andhra (Now Andhra Pradesh) v. East India Commercial Co. Ltd.* [1957] (8 S.T.C. 114; A.I.R. 1957 A.P. 83), *George Oakes (Private) Ltd. v. The State of Madras* [1961] (12 S.T.C. 476) and *S. Ramanatha Shenoy & Co. v. Sales Tax Officer, Tellicherry* (1962 K.L.J. 277; 14 S.T.C. 231) referred to.—*ERNAKULAM RADIO COMPANY v. STATE OF KERALA* [1966] 18 S.T.C. 445 (Ker.).

—Section 3 of the Kerala Surcharge on Taxes Act, 1957, and the Kerala General Sales Tax Act, 1963, can co-exist and the latter does not effect any implied repeal of the former. Section 3 of the Kerala Surcharge on Taxes Act, 1957, is not violative of either Article 14 or Article 19(1)(f) and (g) of the Constitution. It does not effect a confiscation of property or transcends its avowed character of a provision imposing a surcharge on sales tax. The tax imposed by the section is a tax on the sale or purchase of goods and comes under entry 54, List II, Schedule VII of the Constitution. It cannot be considered as an item of income taxation or as a tax on professions, trades, callings and employments within the meaning of those expressions as used in Art. 276 of the Constitution. The differential treatment involved in the fixation of an exemption limit in the Kerala Surcharge on Taxes Act, 1957, is not a discrimination which is either unreasonable, or devoid of a nexus between the provision incorporated and the object sought to be achieved by the enactment. A sales tax is nothing else than a sales tax so long as the base of the tax is nothing other than a sale of goods.—*KILIKAR v. SALES TAX OFFICER, SPECIAL CIRCLE, MATTANCHERRY AND ANOTHER* [1968] 21 S.T.C. 252 (Ker.).

Power to pass validating enactment.—The State Legislature has no power to pass the General Sales Tax (Amendment and Validation) Act, 1962, on the date it was passed in view of the Constitution (Sixth Amendment) Act, 1956. The validity of an enactment should be tested on the basis of the legislative power obtaining on the date on which it comes into being. A piece of legislation may be prospective or retrospective

or both; but in every case the legislative competence is something that must exist when the legislation is passed and not at any other time. Ancient competence which had disappeared or future competence not yet in existence are both of no avail.—DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX, CENTRAL ZONE, ERNAKULAM *v.* THE COCHIN COAL COMPANY LTD. [1963] 14 S.T.C. 845. (Ker.) Reversed in [1968] 21 S.T.C. 403 (S.C.).

Power to pass enactment validating notification—Effect of validation.—See RAM CHAND TEXTILES *v.* SALES TAX OFFICER, HATHRAS [1964] 15 S.T.C. 340 (All.) (F.B.).

Power to validate assessments declared invalid by High Court.—Section 6 of the Mysore Sales Tax (Amendment) Act (26 of 1962) which purported to validate assessments which had been declared to be invalid by the High Court was not *ultra vires* the State Legislature. The section did not impair the powers of the High Court under Article 226 or took away the right of an aggrieved party to approach the High Court. The legislative power conferred on the Legislatures under the Constitution includes the subsidiary or auxiliary power to validate laws which have been found to be invalid. If a law passed by a Legislature is struck down by the Courts as being invalid for one infirmity or another, it would be competent to the appropriate Legislature to cure the said infirmity and pass a validating law so as to make the provisions of the said earlier law effective from the date when it was passed.—SHA VELJI DEVASHI *v.* COMMERCIAL TAX OFFICER, HAVERI [1966] 18 S.T.C. 197 (Mys.).

—The Kerala Sales Tax (Levy and Validation) Act, 1965, which imposed tax on the purchase of copra and cashew-nut kernel during the period from 1st April, 1958 to 31st March, 1963, and validated certain assessments on the purchase of the said goods during the said period is not *ultra vires* the Constitution of India. The liability created by section 3 of the Act is a liability that has been validly created and the retrospective effect given to that liability is equally valid. The liability created by section 3 should be enforced in all cases other than those covered by section 4 by proceedings under section 3 itself. The validation effected by section 4 is only to the extent of the liability created by section 3 and is controlled by the trammenls on that liability. Sections 3 and 4 have to be read together and when so done, there is neither a violation of Article 14 nor an inroad into the judicial power. If there has been a levy, assessment or collection which is invalid for any reason other than the lack of legal foundation provided by section 3 with effect from

1st April, 1958, then that assessment, levy or collection will be open to challenge in appropriate proceedings.—ANANTHANARAYANA IYER AND OTHERS *v.* STATE OF KERALA AND ANOTHER [1967] 19 S.T.C. 281 (Ker.) (F.B.).

—Section 5(3) of the Punjab General Sales Tax Act, 1948, as amended with retrospective effect from 1st October, 1958, by the Punjab General Sales Tax (Amendment and Validation) Act, 1967, is not violative of Article 303 and Article 14 of the Constitution of India or section 15 of the Central Sales Tax Act, 1956. The addition of sub-section (3) to section 5 by the Amending Act has removed all the lacuna and infirmities that were pointed out by the Supreme Court in *Bhawani Cotton Mills Ltd. v. The State of Punjab and Another* [1967] (20 S.T.C. 290) and the Act, as amended, is not open to challenge on those very grounds. A Legislature has the power of validating a law declared invalid by courts and can do away with the effect of any decree or order of any court.—NIAMAT RAI MILKH RAJ AHUJA *v.* STATE OF PUNJAB AND ANOTHER [1968] 22 S.T.C. 365 (Punj. and Har.).

—See also LAXMI COTTON TRADERS PVT. LTD., HANSI *v.* THE STATE OF HARYANA AND ANOTHER [1968] 22 S.T.C. 335 (Punj. and Har.).

Power to pass legislation affecting powers of High Court under Article 226.—Sales tax and matters incidental to it are subjects on which the State Legislature can legislate, but in so legislating it cannot override or contravene the other provisions of the Constitution. It is not open to the State Legislature to pass a law on the subject of sales tax affecting in any way the powers of the High Court under Article 226.—ADARSH BHANDAR *v.* SALES TAX OFFICER [1959] 10 S.T.C. 364 (All.) (F.B.).

Power of Government to give artificial meanings to words.—The power of the State Government to make rules carries with it the power to define or give an artificial meaning to words used in the rules. Consequently defining the word “importer” for the purposes of the rules was within the power conferred by section 24 of the U.P. Sales Tax Act, 1948, and rule 2(d-1) could not be said to be *ultra vires* the State Government.—BHIKA MAL MUSADDI LAL *v.* COMMISSIONER OF SALES TAX, UTTAR PRADESH [1963] 14 S.T.C. 770 (All.).

Power to create fiction.—See YOUNG MEN'S INDIAN ASSOCIATION (REGD.) MADRAS AND ANOTHER *v.* JOINT COMMERCIAL TAX OFFICER, HARBOUR DIVISION II, MADRAS AND ANOTHER [1963] 14 S.T.C. 1030 (Mad.).

Power to impose sales tax on building contracts—Tax on “sale of goods”—Whether restricted to transactions of sale as defined in Sale of Goods Act—Provision imposing sales tax on building contracts—Validity—Whether *ultra vires* Legislature.—See BUILDING CONTRACTS.

Power of States to impose sales tax—Principles stated.—The General Sales Tax (Amendment) Act, 1959, by which sales of toddy by licence holders were made liable to sales tax was not unconstitutional or invalid as offending Article 19(1)(g), 207 or 301 of the Constitution. A taxing statute covered by item 54 of List 2 of the Seventh Schedule of the Constitution cannot be challenged on the grounds of its contravening rules of estoppel or of contracts or being contrary to an earlier undertaking of another Act. The power to tax is a distinct head of State's right and should not be confused with other powers. Limitations on other powers would neither be relevant nor control the exercise of the power to tax and limitations on the State's right to restrict or regulate the several freedoms of Article 19 would not extend to the power to tax. But the exercise of one power should not be such as to destroy what is conferred by the Constitution and the different powers must be harmoniously exercised. Therefore taxing statutes need not be justified as reasonably restricting the right and the freedom to trade in the interest of the general public. The question of the application of Article 19 of the Constitution did not arise if the legislation was not directly in respect of the rights mentioned in the Article, but by operation of the statute, incidentally or remotely affected or infringed some of the rights mentioned therein. Article 19(1)(g) and Article 301 are two facets of the same thing—the freedom of trade. Article 19(1)(g) looks at the matter from the point of view of the individual citizens and protects their individual right to carry on their trade or business. Article 301 looks at the matter from the point of view of the country, trade and commerce as a whole, as distinct from the individual interests of the citizens and it relates to trade, commerce or intercourse both with and within the State. Article 301 would be infringed only where the freedom of trade is directly circumscribed by restriction. Imposing a tax on trade would not infringe the freedom under Article 301 unless the legislation is intended to restrict the freedom. Article 207 forms part of the legislative procedure in financial matters, and Courts are precluded by Article 212 from enquiring into any irregularity of such procedure. The pith and substance of the legislation should also be looked into when determining how far the objection concerning the failure to

comply with the proviso to Article 304(b) is justified. The validity of an Act is not affected if it incidentally trenches on matters outside the authorised field and therefore it is necessary to inquire in each case what is the pith and substance of the Act impugned. If the Act, when so viewed, substantially falls within the powers expressly conferred upon the Legislature which enacted it, then it cannot be held to be invalid, merely because it incidentally encroaches on matters which have been assigned to another Legislature.—*KESAVAN AND OTHERS v. THE STATE OF KERALA AND OTHERS* [1960] 11 S.T.C. 747 (Ker.).

—If the substance of the legislation falls within the legitimate power of the Legislature, the legislation does not become invalid merely because it incidentally encroaches upon a subject or affects a matter outside its authorised sphere.—*CENTRAL POTTERIES LTD. v. STATE OF M.P.* [1960] 11 S.T.C. 399 (Bom.).

Powers of Legislature of newly formed State—Laws adapted and modified to facilitate their application to new State—Whether can be amended.—The Madras Sales of Motor Spirit Taxation (Andhra Pradesh Extension and Amendment) Act (V of 1958) which was passed by the Andhra Pradesh Legislature and to which the assent of the Governor was obtained on 25th March, 1958, was a valid piece of legislation and was not *ultra vires* the Andhra Pradesh Legislature. It is not by virtue of any of the sections of the Andhra State Act, 1953, that the Legislature of the Andhra State could make laws for the people of that State. It is the Constitution that clothes the Legislature with such power and it is traceable to Articles 245 and 246 of the Constitution. The only effect of section 53 of the Andhra State Act is that laws prevailing in the area prior to the formation of the Andhra State became equally the laws of the new State as if they were enacted by the Andhra State Legislature. When once an enactment is regarded as made by a particular legislative body, it is that body that is empowered to amend or repeal that statutory law. The operation of the Madras Sales of Motor Spirit Taxation Act, 1939, passed by the Madras Legislature within its local areas was not in any way affected by the changes in the statute as introduced by the Legislature of Andhra Pradesh. The adaptation and extension to a new State of laws made by another legislative authority is not obnoxious to the principle of Article 246(3) and does not detract from the exclusive character of the legislation contemplated by that Article. The Constitution has not prescribed any form in which a law has to be made. The Legislature

may choose any pattern it likes to make laws. It need not indulge in the device of re-enacting a statute. It has only to see that any measure passed by it is within the general scope of the dominion assigned to it. When once that is done, the statute cannot be attacked on the ground that it does not conform to any particular mode. Adapting or extending the laws made by a different Legislature does not tantamount to abdication of the powers of the Legislature and breach of the "sacred trust" reposed in the Legislature. The power to make legislation includes the power to adopt a measure enacted by another Legislature. Such a device is a form of legislation.—**MOHAMMAD BHUDAN KHAN AND OTHERS v. THE STATE OF ANDHRA PRADESH AND OTHERS** [1959] 10 S.T.C. 263 (A.P.).

Power to adopt statute of another Legislature.—The Legislative Assembly of the Union Territory of Pondicherry passed the Pondicherry General Sales Tax Act, 1965, which received the assent of the President on May 25, 1965. Section 1(2) of the Act provided that it would come into force on such date as the Government may by notification appoint. Section 2(1) provided: "The Madras General Sales Tax Act, 1959...as in force in the State of Madras immediately before the commencement of this Act, shall extend to and come into force in the Union Territory of Pondicherry...", subject to certain modifications and adaptations specified in that section. Section 2(2) provided that the Madras General Sales Tax Rules, 1959, and any other rules made or issued under the Madras Act and similarly in force, were to apply to Pondicherry. The Pondicherry Government issued a notification dated March 1, 1966, bringing into force the Madras General Sales Tax Act, 1959, as extended by the Pondicherry Act to Pondicherry as from April 1, 1966. In the meantime the Madras Legislature had amended the Madras Act and consequently it was the Madras Act as amended up to April 1, 1966, which was brought into force under that notification. The Legislative Assembly of Pondicherry thereafter passed the Pondicherry Sales Tax (Amendment) Act, 1966, whereby the following amendments were made: (i) Section 1(2) of the main Act was amended to read as follows: "It shall come into force on the first day of April, 1966"; (ii) Section 2(1) of the main Act was amended by substituting the words "the first day of April, 1966" for the words "the commencement of this Act"; (iii) Section 2(2) was amended to read as follows: "The Madras General Sales Tax Rules, 1959, and any other rules made or issued under the said Act and similarly in force in so far as their application is required for the purpose of effectively applying the provisions of

the said Act shall also extend to and be in force in the Union Territory of Pondicherry until such time rules are framed under section 53 of the said Act": *Held*, by SUBBA RAO, C.J., SHELAT and MITTER, JJ. (SHAH and BHARGAVA, JJ., dissenting) (i) that there was a total surrender in the matter of sales tax legislation by the Pondicherry Assembly in favour of the Madras Legislature, and therefore the Pondicherry General Sales Tax Act, 1965, was void or still-born; (ii) that since the Pondicherry Sales Tax (Amendment) Act, 1966, was and was intended to be an amendment of the Principal Act, and was passed on the footing that the Principal Act was a valid Act, it could not be considered as an independent legislation; since the Principal Act was still-born, the attempt to revive that which was void *ab initio* was frustrated and the Amendment Act of 1966 could have itself no efficacy. *Per* SUBBA RAO, C.J., SHELAT and MITTER, JJ.—(i) The core of a taxing statute is in the charging section and the provisions levying such a tax and defining persons who are liable to pay such tax. If that core disappears, the remaining provisions have no efficacy. (ii) The fact that a Legislature possesses plenary legislative powers within a particular field does not mean that the Legislature can shirk its duty by making a law that it shall not operate on that field but somebody else will operate on its behalf. (iii) It may be that a mere refusal may not amount to abdication if the Legislature, instead of going through the full formality of legislation, applies its mind to an existing statute enacted by another Legislature for another jurisdiction, adopts such an Act, and enacts to extend it to the territory under its jurisdiction. In doing so, it may perhaps be said that it has laid down a policy to extend such an Act. But when it not only adopts such an Act, but also provides that the Act applicable to its territory shall be the Act amended in future by the other Legislature, there is nothing for it to predicate what the amended Act would be. Such a case would clearly be one of non-application of mind and one of refusal to discharge the function entrusted to it by the Instrument constituting it. It is difficult to see how such a case is not one of abdication or effacement in favour of another Legislature at least in regard to that particular matter. *Per* SHAH and BHARGAVA, JJ.—Even if it be held that the Principal Act was bad for excessive delegation of powers when it was enacted and published, the subsequent amending Act passed by the Pondicherry Legislature had the effect of bringing into force in Pondicherry a valid Act under which proceedings could be validly taken. In *re Delhi Laws Act*, 1912 ([1951] S.C.R. 747) considered.—

B. SHAMA RAO *v.* THE UNION TERRITORY OF PONDICHERRY [1967] 20 S.T.C. 215 (S.C.).

—Sub-rule (7) of rule 5 of the Central Sales Tax (Madras) Rules, 1957, at least in so far as it provided for limitation and determination of escaped turnover by best judgment is in excess of the rule-making power and the sub-rule, as a whole, is therefore invalid. But section 9(3) of the Central Sales Tax Act, 1956, would enable the officer to invoke those powers which he has under the Madras General Sales Tax Act, 1959, in assessing turnover which has escaped assessment in any year. While it is competent for the Parliament to adopt the existing provisions of a local law as part of the Central legislation without repeating those provisions in the Central Act, it cannot make a law adopting the provisions of a local law which did not exist at the time. But in applying this principle the court should look at the substance and not the form of the matter. Section 16 of the Madras General Sales Tax Act, 1959, substantially re-enacted the provisions under the Madras General Sales Tax Act, 1939, relating to assessment of escaped turnover and the period of limitation for exercising that power, and the subject-matter of section 16 was not something which the Parliament had not applied its mind to when it enacted sec. 9(3). Therefore section 9(3) is not unconstitutional.—HAJI J. A. KAREEM SAIT *v.* DEPUTY COMMERCIAL TAX OFFICER, METTUPALAYAM [1966] 18 S.T.C. 370 (Mad.).

—The Legislature cannot with propriety make a law to adopt by reference the provisions of a statute law as it stands amended by the Legislature from time to time, and the Madras General Sales Tax Act, 1939, which was incorporated by reference by section 9(3) of the Central Sales Tax Act, 1956, did not contain a provision for levy of a penalty referred to in section 16(2) of the Madras General Sales Tax Act, 1959. Therefore the provisions of section 9(3) of the Central Sales Tax Act, 1956, cannot be applied for the levy of a penalty on a dealer for a contravention of the kind contemplated in section 16(2) of the Madras General Sales Tax Act, 1959.—THE STATE OF MADRAS *v.* M. ANGAPPA CHETTIAR AND SONS [1968] 22 S.T.C. 226 (Mad.).

—Where the Legislature makes a law adopting by reference certain provisions contained in a different enactment, no intention could be imputed to the Legislature that any amendment to that enactment should also become a part of the law which the Legislature has adopted originally by reference. This is on the principle that a Legislature cannot abdicate its functions. As there was no power under the Madras General

Sales Tax Act, 1939, to enhance a turnover in an appeal by an assessee, an enhancement cannot be made in proceedings under section 9(3) of the Central Sales Tax Act, 1956, merely because of section 31(3) of the Madras General Sales Tax Act, 1959.—K. A. RAMUDU CHETTIAR AND COMPANY *v.* THE STATE OF MADRAS [1968] 22 S.T.C. 283 (Mad.).

Power to impose tax on works contracts—

Although the States have no power to tax a works contract as such, there is no impediment in the States levying a tax on the sale of goods properly so-called and therefore if a works contract includes sale of goods the levy of tax on such sale would be proper. If, on the other hand, the contract is only a works contract with no element of sale of goods, it would not be taxable. It cannot be held as a general proposition that in every case of a works contract there is necessarily implied a sale of the component parts which go to make up the repair. That question would depend on the facts of each case. The State Government has no power to legislate and tax a works contract by treating it or a portion of it as sale and the method of assessment of an artificial and fixed percentage of turnover as cost of materials used is illegal. To constitute a sale of goods, in addition to a transfer of movable property, two more elements at least are necessary: (1) There should be an agreement between the parties to sell and purchase, and (2) that agreement should be with reference to the particular goods. In the case of a repair of a motor car, if a motor part is put in the car while reconditioning and repairing it, title to that motor accessory passes when the repairer delivers the car to its owner; but to constitute a sale of that part it is necessary to have an agreement between the parties for the sale of that accessory. Therefore whether in a particular case there is a contract of sale of materials as distinct from a pure works contract would depend upon the agreement between the parties and on proof of an intention to sell the materials as such. If the essential intention of the parties was to have the car repaired, the manufacture of a particular chattel can only be incidental to the repair and not one for the sale of it.—SUNDARAM MOTORS (PRIVATE) LTD. *v.* THE STATE OF MADRAS [1958] 9 S.T.C. 687 (Mad.).

—See also BUILDING CONTRACTS.

Power to legislate for refund of tax illegally collected.—The power to legislate with respect to sales tax comprehends the power to impose the tax, to prescribe the machinery for collecting the tax, to designate the officers by whom the liability may be enforced and to prescribe the

authority, obligations and indemnity of those officers. The diverse heads of legislation in the Schedule to the Constitution demarcate the periphery of legislative competence and include all matters which are ancillary or subsidiary to the primary head. The State Legislature has therefore the power of granting refund of tax improperly or illegally collected and to declare that refund can be claimed only by the person from whom the dealer has actually realised the amounts by way of sales tax.—*THE ORIENT PAPER MILLS LTD. v. THE STATE OF ORISSA AND OTHERS* [1961] 12 S.T.C. 357 (S.C.).

—As the power to legislate in respect of tax comprehends the power to legislate in respect of refund of tax improperly or illegally collected, imposition of restrictions on the exercise of the right to claim refund will not be beyond the competence of the Legislature. Granting refund of tax improperly or illegally collected and the restriction on the exercise of that right are both ancillary or subsidiary matters relating to the primary head of tax on sale of goods.—*BURMAH CONSTRUCTION COMPANY v. THE STATE OF ORISSA AND OTHERS* [1961] 12 S.T.C. 816 (S.C.).

Power to make provision to recover from dealers unlawful collection of tax or forfeit such collections.—See *SALES TAX infra*.

Power to penalise evasion of tax.—A power to penalise evasion of tax which is lawfully due is ancillary to the taxing power, and therefore section 12(3) of the Madras General Sales Tax Act, 1959, cannot be struck down as unconstitutional. But having regard to the underlying intent of the section, before imposing penalty under that section, it is necessary for the assessing authority to be satisfied that the non-disclosure is wilful and is designed to evade tax.—*A. V. MEIYAPPAN v. COMMISSIONER OF COMMERCIAL TAXES, BOARD OF REVENUE, MADRAS, AND ANOTHER* [1967] 20 S.T.C. 115 (Mad.).

Power to levy sales tax on medicinal and toilet preparations containing alcohol.—After the enactment of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, the power of the State Government to levy excise duty under the C.P. and Berar Excise Act, 1915, on medicinal and toilet preparations containing alcohol terminated and such articles ceased to be leviable with excise duty under the Excise Act. Accordingly entry 32 in Schedule II of the C.P. and Berar Sales Tax Act, 1947, no longer applied to such preparations and the sale of such preparations was liable to sales tax. It is not necessary that duty should have been actually levied on the goods to attract application of entry 32 of Schedule II of the C.P. and Berar Sales Tax Act, 1947. It is sufficient if there is power under the relevant Act to impose

such a duty. Although the power of the State Government to impose excise duty on medicinal and toilet preparations containing alcohol has been taken away by entry 51 in List II of the Seventh Schedule of the Constitution, it does not affect its power to levy sales tax on such preparations which has been independently given to them by virtue of entry 54 in List II.—*ALEMBIC DISTRIBUTORS LTD. AND ANOTHER v. ASSISTANT COMMISSIONER OF SALES TAX, JABALPUR* [1962] 13 S.T.C. 64 (M.P.).

Power to differentiate goods and to tax at different rates.—The differentiation made by the Legislature in the Second Schedule to the Mysore Sales Tax Act, 1957, between hydrogenated oil and groundnut oil is not illusory, for, it is only after groundnut oil undergoes some processes that it becomes vanaspathi. The Legislature can tax at different rates or in different ways, *e.g.*, in regard to incident or exemption, commodities which can be reasonably differentiated.—*VENUGOPALASWAMY & Co. v. DEPUTY COMMISSIONER OF COMMERCIAL TAXES, CITY DIVISION, BANGALORE, AND ANOTHER* [1963] 14 S.T.C. 883 (Mys.).

—See also *DISCRIMINATORY LEGISLATION*.

Power to withdraw exemption retrospectively.—The petitioner was exempted from the levy of sales tax in the year 1959-60 under item 49 in Schedule B to the Punjab General Sales Tax Act, 1948. Item 49 was however omitted from Schedule B by the Punjab General Sales Tax (Amendment) Act, 1962, and this omission was given retrospective effect from 1st April, 1959, by section 1(2) of the Amending Act. On the question whether the petitioner was liable to sales tax for the year 1959-60 on account of the withdrawal of the exemption: *Held*, that the withdrawal of the exemption by the deeming provision retrospectively could not in fact obliterate the actual fact, namely, that the exemption had been enjoyed and at the time when the exemption was enjoyed, it was lawfully enjoyed. There was no provision in the Amending Act authorising levy of sales tax retrospectively, and the tax which had not been imposed could not be deemed to have been imposed by recourse to section 3 read with section 1(2) of the Amending Act. Therefore sales tax could not be levied on the petitioner for the year 1959-60.—*SEWAK HOTEL v. THE EXCISE AND TAXATION OFFICER, BHATINDA, AND ANOTHER* [1963] 14 S.T.C. 524 (Punj.). This decision was overruled and was also reversed.—See below.

—The effect of section 1(2) of the Punjab General Sales Tax (Amendment) Act (8 of 1962) was to withdraw the exemption granted by item 49 in Schedule B of the Punjab General Sales Tax Act, 1948, on and from 1st April, 1959, and make

persons running *tandoors*, *lohs* and *dhabas* liable to sales tax at the taxable quantum of Rs. 25,000 from that date. The withdrawal of an exemption is not a case of making a second provision charging sales tax a second time. It is merely the revival of the charging provision which has remained dormant or ineffective while the exemption has been in operation. The Legislature can not only make a taxing statute imposing tax retrospectively, but it can withdraw an exemption already granted retrospectively. A deeming provision creates a statutory fiction and while such a statutory fiction is to be strictly construed, to the extent it is effective and clear, it must be given effect to. Under the Punjab General Sales Tax Act, 1948, the primary liability to pay sales tax is that of the dealer and the fact that section 6(1) says that the dealer may collect it from the consumer or the purchaser does not prevent the sales tax imposed on the dealer or the seller to be any the less sales tax on the sale of goods. *Sewak Hotel v. Excise and Taxation Officer, Bhatinda* [1963] (14 S.T.C. 524) overruled.—*BHAGWAN, HOTEL v. THE ASSESSING AUTHORITY, ROHTAK, AND ANOTHER* [1964] 15 S.T.C. 319 (Punj.).

Power of Legislature to withdraw exemption retrospectively.—The effect of section 1(2) of the Punjab General Sales Tax (Amendment) Act (8 of 1962) was to withdraw the exemption granted by item 49 in Schedule B of the Punjab General Sales Tax Act, 1948, on and from 1st April, 1959, and therefore persons enjoying the exemption by virtue of that item would be liable to sales tax from that date. The decision of the High Court in *Bhagwan Hotel v. The Assessing Authority, Rohtak, and Another* [1964] (15 S.T.C. 319) does not require reconsideration. The deletion of item 49 from Schedule B of the Act was by an Act of the Legislature, and therefore the provisions of section 6(2) would not be attracted. Decision of D. K. MAHAJAN, J., in *Sewak Hotel v. The Excise and Taxation Officer, Bhatinda, and Another* [1963] (14 S.T.C. 524) reversed.—*THE STATE OF PUNJAB AND ANOTHER v. SEWAK HOTEL, BHATINDA* [1968] 21 S.T.C. 276 (Punj. and Har.).

—See also *EPARI CHINNA KRISHNA MOORTHY AND ANOTHER v. THE STATE OF ORISSA AND OTHERS* [1964] 15 S.T.C. 461 (S.C.).

Power of State Government to levy sales tax at whatever rate.—Any legislation which vested unfettered legislative powers in the executive would be *ipso facto* void and unconstitutional. Therefore section 5 of the East Punjab General Sales Tax Act, 1948, which gave an unlimited power to the executive to levy sales tax at the

rate it thought best, was invalid. Section 5 is the charging section and, being the kernel of the enactment, the remaining provisions of the Act would become inchoate or ineffective without it. Therefore the entire Act was invalid and did not become valid till the defect in section 5 was remedied by the East Punjab General Sales Tax (Second Amendment) Act (19 of 1952).—*GANGA RAM SURAJ PARKASH v. THE STATE OF PUNJAB* [1963] 14 S.T.C. 476 (Punj.).

—The real liability to pay tax arises by reason of section 4 of the East Punjab General Sales Tax Act, 1948, and sections 5 and 6 provide for rate of tax and goods on which tax may not be payable under the Act. Sections 4, 5 and 6 read together constitute the charging legislative provision. Section 5 gave an unlimited power to the executive to levy sales tax at the rate it thought best, but the Act did not become void in its entirety by reason of excessive delegation. The infirmity attaching to section 5 could be removed by the Legislature by amending the section without the formality of enacting the whole of the amended section. The East Punjab General Sales Tax (Second Amendment) Act, 1952, removed effectively the vice of excessive delegation contained in section 5 and therefore the tax contemplated by the Act could be lawfully levied and collected. *Ganga Ram Suraj Parkash v. The State of Punjab* [1963] (14 S.T.C. 476) explained. The task of declaring a law unconstitutional is both delicate and solemn, for, it amounts to a judicial determination that persons entrusted by the Constitution with the sovereign function of making laws for the people have, whether consciously and deliberately or unconsciously due to ignorance, indifference or error of judgment, disregarded their own constitutional limitations. The Courts are thus legitimately expected to enter upon this responsible task with a certain amount of reluctance and a statute which the Legislature is competent to enact must not be lightly struck down as unconstitutional on hypertechnical grounds. The Legislature has a very wide discretion in making legislative classification and there is always a strong presumption in favour of its validity.—*NABHA RICE AND OIL MILLS v. THE STATE OF PUNJAB AND OTHERS* [1963] 14 S.T.C. 559 (Punj.).

—Since under section 5 of the Punjab General Sales Tax Act, 1948, as it originally stood, an uncontrolled power was conferred on the Provincial Government to levy tax at such rates as the Government might direct, the Legislature practically effaced itself in the matter of fixation of rates and it did not give any guidance either

under that section or under any other provisions of the Act. Section 5 as it was originally enacted was therefore void. But for that reason the entire Act was not still-born. The charging section was not section 5 but section 4 and the striking out of section 5 did not make section 4 void, though till a proper section was inserted, it remained unenforceable. The amendment made by section 2 of the East Punjab General Sales Tax (Second Amendment) Act, 1952, had the effect of inserting in the Act section 5 as amended with retrospective effect. Under that section the discretion given to the Government to fix a rate not exceeding 2 pice in a rupee was so insignificant that it was not possible to hold that the discretion exceeded the permissible limits and therefore section 5 as amended was valid.—*DEVI DASS GOPAL KRISHNAN AND OTHERS v. THE STATE OF PUNJAB AND OTHERS* (and other cases) [1967] 20 S.T.C. 430 (S.C.).

Power to withdraw exemption of taxes granted to company by Ruler of Native State.—The respondent-company was established in Gwalior State after an agreement with the Ruler of the then Gwalior State dated 7th April, 1947. By that agreement the Ruler agreed to exempt the respondent "from payment of all taxes and/or duties, in any form or nature whatsoever on its incomes, profits and gains of business, levied or to be hereinafter levied in the Gwalior State, or any part thereof, for a period of twelve years reckoned from the date on which the factory or factories has or have started working or starts or start working." The Gwalior State merged thereafter in the United State of Madhya Bharat and when the Constitution came into force on 26th January, 1950, the United State of Madhya Bharat became the Part B State of Madhya Bharat. The question was whether by virtue of the agreement dated 7th April, 1947, it was not open to the State of Madhya Bharat or its officers to levy sales tax on the sales made by the respondent: *Held*, that the principle of the decision in *Union of India v. Gwalior Rayon Silk Manufacturing (Weaving) Company Limited* [1964] (53 I.T.R. 466) applied to Article 295(2) also under which the obligation in the present case devolved on the Part B State of Madhya Bharat. Therefore the legislative provisions made by the Madhya Bharat Sales Tax Act, 1950, or the Madhya Pradesh General Sales Tax Act, 1958, would prevail as against that agreement and the officers would have the power to levy sales tax on the sales made by the respondent. [The Court found it unnecessary to consider whether the exemption granted by the agreement would cover sales tax also.]—*GWALIOR RAYON SILK MANU-*

FACTURING (WEAVING) CO. LTD. v. THE STATE OF MADHYA PRADESH AND OTHERS [1964] 15 S.T.C. 791 (S.C.).

Power to make provision requiring registration and maintenance of registers by millers who are not dealers.—The petitioner, a miller whose business consisted in milling rice for hire only and who was not a dealer in paddy and rice, challenged the provisions introduced in the Andhra Pradesh General Sales Tax Act, 1957, by the Andhra Pradesh General Sales Tax (Amendment) Act, 1963, in so far as they pertained to a miller, who was not a wholesale dealer or a retail dealer, on the ground that the provisions were *ultra vires* the State Legislature and were unreasonable restrictions on the petitioner's right to carry on business: *Held*, (1) that the provisions were meant to check evasion of sales tax which was a power incidental and ancillary to the power to levy sales tax and they were therefore not *ultra vires* the State legislature; (2) that the maintenance of registers of the transactions by the petitioner did not impose any restrictions on his right to carry on business or hold property, but would only set his business on regular lines. Even if they were restrictions, they were reasonable restrictions and were therefore valid.—*N. PULLAYYA v. THE GOVERNMENT OF ANDHRA PRADESH* [1968] 21 S.T.C. 291 (A.P.).

Power to make provision for setting up check posts and barriers.—The petitioner, a company transporting goods for hire between Delhi and certain towns in the State of Uttar Pradesh, challenged the validity of section 28 of the U.P. Sales Tax Act, 1948, and rule 83 of the U.P. Sales Tax Rules on the ground that they were inconsistent with the provisions of Articles 14 and 304 of the Constitution: *Held*, (1) that although the legislature had made a distinction between goods transported by the railway company and goods transported otherwise, the classification was a reasonable one having a relation to the object of the enactment and therefore the provisions were not inconsistent with Article 14 and were not void; (2) that neither the erection of check posts nor the provisions relating to filling in by the operator of a declaration in Form No. 17 was an interference with inter-State trade and the provisions were therefore not inconsistent with Article 304 of the Constitution. Although the notification dated 4th October, 1956, stated that fine can be imposed in the case of contravention of section 28 or rule 83, it had not created any new offence or punishment. The case really came under section 14, clause (e), under which persons contravening any of the provisions of the Act or

the rules were made punishable.—*RAMA TRANSPORT CO. (PRIVATE) LTD. v. THE STATE OF UTTAR PRADESH AND OTHERS* [1957] 8 S.T.C. 725 (All.).

—Sections 29, 30 and 31 of the Kerala General Sales Tax Act (XV of 1963) are not violative of Articles 14 and 301 of the Constitution of India. *Rama Transport Co. (Private) Ltd. v. State of Uttar Pradesh and Others* [1957] (8 S.T.C. 725; A.I.R. 1957 All. 448) relied on.—*SREE NARAYANA TRANSPORTS v. STATE OF KERALA* [1965] 16 S.T.C. 659 (Ker.).

—Section 28-A of the Mysore Sales Tax Act, 1957, which is intended to set up a machinery to prevent evasion of tax, is within the ambit of ancillary powers of legislation under Entry 54 of List II in the Seventh Schedule of the Constitution and therefore within the competence of the State Legislature. The provisions are also within the competence of the legislature from the point of view of Article 301. The substantive part of section 28-A [sub-sections (2) and (3)] considered by itself, cannot be condemned as imposing any unreasonable restrictions on the fundamental rights of individuals guaranteed by Article 19(1)(g) of the Constitution but the provisions of the procedural part of the section, *viz.*, sub-sections (4), (5) and (6), impose an unreasonable restriction on the fundamental rights of individuals. Although sub-section (7) may be read as conferring power which is as wide as appellate power with an amplitude sufficient to correct all errors of the original authority, it is of no value because, having regard to the effect of sub-sections (4), (5) and (6), there would be no occasion at all for the effective exercise of that power. Therefore, it should stand or fall with sub-sections (4), (5) and (6), although, if considered in isolation, it is not open to any attack of unreasonableness or to the criticism that it confers a purely discretionary power. Therefore sub-sections (4), (5), (6) and (7) of section 28-A are unconstitutional and liable to be struck down but sub-sections (1), (2) and (3) are valid and constitutional. So much of rules 23-D and 23-E as relate exclusively to sub-sections (4), (5) and (6) and the entire rule 23-F prescribing the Deputy Commissioner as the authority for the purpose of sub-section (7) are also inoperative. The power to legislate on a topic of legislation carries with it the power to legislate on an ancillary matter which can be said to be reasonably included in the power given. The power to provide for the taking of steps to prevent evasion of tax is reasonably related to the legislative power itself of imposing such tax. Persons who are not directly liable to pay the tax may also have their activities reasonably

restricted with a view to prevent the principal persons liable to tax from evading payment of tax. If, therefore, the provisions of a section can be regarded as provisions against evasion, the fact that persons affected by the section are not themselves assessee does not affect the legislative competency of the section. Section 28-A of the Mysore Sales Tax Act, 1957, does not purport to levy any tax and therefore there is no possibility of either exempted goods or inter-State transactions being exposed to levy of tax not lawfully exigible. The section does not say that the payment demanded by it, though not a tax, shall be paid as if it were a tax. What it does is to make certain provisions with a view to prevent evasion of tax and to impose penalty for contravention of those provisions. Penalty is intended to make the machinery against evasion effective. The information sought under the section is only for identifying the nature of the transaction and tracing the dealer only with a view to see that a person or a transaction legitimately liable to sales tax under the State Act does not escape payment of such tax. Regulatory measures or measures imposing compensatory taxes for use of trading facilities do not come within the purview of restrictions contemplated by Article 301, but regulatory measures should be such as do not impede the freedom of trade, commerce and intercourse. Vehicles which can be lawfully dealt with under section 28-A are only the vehicles answering the description in section 2(8) of the Motor Vehicles Act. But the selection of such vehicles for inspection with a view to collect information useful for checking evasion of sales tax and obliging the persons in charge of such vehicles to furnish such information cannot be said to be devoid of an intelligible criterion to place them in a separate category or entirely unconnected with the object of the section. Section 28-A, while providing for an enquiry, has totally failed to indicate what the point for enquiry is and the so-called enquiry provided in the section must be regarded as a pretence. Moreover the section has failed to state in clear terms the exact circumstances in which alone so serious a penalty as actual confiscation of the goods can be ordered, while apparently suggesting or making one believe by its general tenor and objective that mere absence of documents may not be a sufficient cause for confiscation.—*P. VENKATACHALAPATHI AND OTHERS v. COMMERCIAL TAX INSPECTOR, INTELLIGENCE SECTION AND OTHERS* [1965] 16 S.T.C. 894 (Mys.).

Power of inspection, search, seizure and confiscation—Validity of provisions.—Section 41(4) of the Madras General Sales Tax Act, 1959, in so far as it provides for the power of seizure and

confiscation of goods is not within the ambit of Entry 54, List II, Schedule VII, of the Constitution and is neither ancillary nor incidental thereto and is therefore invalid. The power of seizure and confiscation of goods is not ancillary or incidental to the power to levy tax on sale or purchase of goods, even from the stand-point of checking evasion or making evasion unprofitable. The investiture of the power of search and seizure under section 41 is of a general character and on officers not confined to the highest or top rank in the hierarchy but on all officers from top to bottom, both of the Commercial Taxes Department, Revenue Department as also the Police Department, who can at their will and whim exercise that power, and they are not obliged to tell or explain to anyone higher up in the tax department as to why and in what circumstance they happen to exercise the power and the manner of search. Drastic and serious as the power of search is, the exigencies of tax collection do not justify such a general, unrestricted and direct investiture of the power of search on even the minor officials of the various departments, not confined to the tax authorities alone, without a fairly higher official above them, having to examine in each case whether the interests of the State demand or the circumstances of tax collection require that the power of search should be exercised in particular and specific cases. Sub-sections (2) to (4) of section 41 cannot therefore be viewed as reasonable restrictions and they offend Article 19(1)(f) and (g) of the Constitution. The first component of clause (a) of the second proviso to sub-section (4) is *ultra vires* the powers of the State Legislature as it contemplates a tax on goods without reference to their sales or purchases. As it is not severable from the rest of the clause, the entirety of that clause must be struck down. The power of search even of goods, if included in section 41, would be competent and such a power would be plainly in aid of achieving the purposes of the Act. The power of search of books and documents etc., of a dealer maintained in the course of his business would also be sustainable. A search is not mere looking for something which is produced or open but which is hidden, concealed, or not obvious. It is looking for in the sense of seeking out what is suspected or concealed by probing into or investigation or examination. Seizure is not mere taking but taking with force. A mere power of inspection will not take with it a power to seize unlike a search, which often includes a power of seizure. A power of seizure need not necessarily imply a power of search, for, there may be seizure on production or on inspection. Sub-section (2) of section 41 of the Act does not include a power of

search and is confined to looking into or looking at or examination of all kinds of records, accounts and goods and places which are made available or open for the purpose. It does not authorise an exploratory probing into or looking for something hidden or concealed with the ancillary or consequential power of seizure. A proviso cannot take the place of or substitute the main part. It can do no more than to restrict by exception or qualification the scope and ambit of the main provision and where the main provision is somewhat ambiguous, a proviso may sometimes throw light to clear the ambiguity but it can never as a proviso expand, enlarge or amplify the scope and ambit of the main provision which on its plain language is restricted. Nor can a proviso import, by any means, into the main part words which are not there. A proviso completely depends on the main part and is subject to it, as otherwise it will cease to be a proviso and be an independent provision by itself. If the draftsman or the Legislature assumed but wrongly wider scope and content of a main enacted provision which plainly or *ex facie* is not justified and on that assumption modelled and legislated a proviso, such an assumption implied in the proviso is entirely futile to have the effect of law. In enacting the proviso to sub-section (2) the Legislature assumed a power of search in the sub-section which is not there, and this erroneous assumption is no law and does not and cannot enlarge the scope of the sub-section. The entire proviso is otiose. An organic power or topic or field of legislation in the Seventh Schedule to the Constitution should be read in its widest possible amplitude and as including also all ancillary, subsidiary, incidental and necessary powers to make the legislation under the particular topic as effective as possible with reference to its objective and purpose. The question of ancillary nature or character of the provision will have to be decided with respect to the circumstances of the particular legislation, its objective and scope, vis-a-vis the particular legislative head or topic or power. The right under Article 19(1)(f) covers business premises and the kinds of records mentioned in section 41(2) of the Act. Any invasion of the business premises or search and seizure of records and goods from there will affect the right to hold and dispose of the property. The right to hold the property will include the right to enjoy that property without interference or disturbance. Equally, when books of accounts or goods in trade are searched for and taken away, it necessarily affects the business, carrying on the business and also injuriously reflects on the business reputation of the individual concerned. But exigencies of tax collection, which

constitute a public interest, may make it necessary to subordinate the rights under Article 19(1)(f) and (g). In order that the invasion may be lawful, it should be reasonable and within limits, so that it may be regarded as a reasonable restriction.—**SHRI RAMKISHAN SRIKISHAN JHAVER AND OTHERS v. COMMISSIONER OF COMMERCIAL TAXES AND OTHERS** [1965] 16 S.T.C. 708 (Mad.). There was an appeal to the Supreme Court against the decision. See below.

—The power to levy a tax includes all incidental powers to prevent the evasion of such tax. The power to seize and confiscate goods is only by way of punishment or penalty which is intended to operate as the most effective deterrent against tax-evaders and it is therefore ancillary or incidental to the power to levy tax on the sale of goods and falls within the ambit and scope of the legislative power conferred on the State Legislature under Entry 54 of List II of the Seventh Schedule of the Constitution of India. So long as the steps or measures taken by the State Legislature are directed towards the achievement of the object of prevention of evasion of tax, they come within the scope of ancillary powers irrespective of the question whether it may be necessary or not for the Legislature to impose a drastic provision or only a lenient punishment. Therefore section 28(6) and section 29(3) of the Andhra Pradesh General Sales Tax Act, 1957, are not *ultra vires* the State Legislature. The procedure laid down under the Andhra Pradesh General Sales Tax Rules, 1957, for seizure and confiscation of goods does not impose any unreasonable restrictions or confer any unreasonable or unguided power in the hands of the officers of the department and therefore does not infringe Articles 14 and 19(1)(f) and (g) of the Constitution. The rules provide for an elaborate procedure including opportunity of hearing to the assessee before confiscation order is passed. The fact that the officers in charge of the duty of seizure and confiscation are likely to abuse their powers is not a ground for invalidating the statute. [The question whether the power of seizure and confiscation falls under Entry 26 of List II (trade and commerce) was left open.] *Abdul Quader and Co. v. Sales Tax Officer, Second Circle, Hyderabad* [1964] (15 S.T.C. 403) explained, *Shri Ramkishan Srikishan Jhaver and Others v. Commissioner of Commercial Taxes and Others* [1965] (16 S.T.C. 708) dissented from; *P. Venkatachalapathi and Others v. Commercial Tax Inspector, Intelligence Section and Others* [1965] (16 S.T.C. 894) followed on one point and dissented from on another point.—**K. S. PAPANNA AND ANOTHER v. DEPUTY COMMERCIAL TAX OFFICER, GUNTAKAL, AND OTHERS** [1967] 19 S.T.C. 506 (A.P.).

—While making a law under any entry in the Schedule to the Constitution it is competent to the Legislature to make all such incidental and ancillary provisions as may be necessary to effectuate the law; particularly, in the case of a taxing statute, it is open to the Legislature to enact provisions which would check evasion of tax. It is under this power to check evasion that provision for search and seizure is made in many taxing statutes. The Legislature has therefore power to provide for search and seizure in connection with taxation laws in order that evasion may be checked. The provisions of section 41(2) and (3) of the Madras General Sales Tax Act, 1959, are reasonable restrictions on the fundamental right to hold property and to carry on trade under Article 19(1)(f) and (g) of the Constitution and are protected by clauses (5) and (6) of Article 19. Though sub-section (2) of section 41 of the Madras General Sales Tax Act, 1959, does not in terms provide for search, the power of search is implicit in the sub-section with reference both to the accounts etc. maintained by the dealer and the goods in the possession of the dealer. But the main part of sub-section (2) does not give to the officer any power of inspecting the residential premises of the dealer and it cannot therefore be read as giving the power of search of the residential house of the dealer. By the fact that section 41(2) gives power to the Government to empower any officer to make a search, it cannot be considered as conferring an arbitrary power, for the Government will see that officers of proper status are empowered. It cannot be said that an Assistant Commercial Tax Officer or an Inspector of the Revenue Department or a Sub-Inspector of the Police Department, empowered by the Government to make searches, is not an officer of proper status to make searches under section 41(2) of the Act. Further, the provisions of the Code of Criminal Procedure, so far as may be, apply to all searches made under sub-section (2) of section 41 of the Act, and therefore section 165 of the Code of Criminal Procedure would apply *mutatis mutandis* to searches made thereunder. The safeguards under section 165 which apply to searches under section 41(2) are: (i) the empowered officer must have reasonable grounds for believing that anything necessary for the purpose of the recovery of tax may be found in any place within his jurisdiction; (ii) he must be of the opinion that such thing cannot be otherwise got without undue delay; (iii) he must record in writing the grounds for his belief; and (iv) he must specify in such writing so far as possible the thing for which search is to be made. In view of these and other safeguards provided in Chapter VII of the

Code of Criminal Procedure, it cannot be said that sub-section (2) is an unreasonable restriction on the fundamental right to hold property and to carry on trade. If in relation to a search under sub-section (2), the safeguards are not followed, anything recovered on such a defective search must be returned. The proviso to sub-section (2) of section 41 provides for something independent of the main part of the sub-section. Where a search warrant issued by a Magistrate is shown to be defective because he had not applied his mind to the question of issuing it, anything recovered on the basis of such a warrant from the search of a residential house must be returned. The provisions in sub-section (3) requiring (i) that the officer should record his reasons in writing, which has to be done before the accounts are seized, (ii) that the dealer should be given a receipt, which means that the receipt must be given as and when the accounts etc. are seized, (iii) that the accounts etc. seized should be retained only so long as may be necessary for their examination and for any enquiry or proceeding under the Act, and (iv) that such accounts should not be kept for more than 30 days at a time except with the permission of the next higher authority, are sufficient safeguards, and the restriction under sub-section (3), if any, on the right to hold property and the right to carry on trade, must be held to be a reasonable restriction. It is not open to the officer under sub-section (3) of section 41 to seize anything from a residential accommodation for he cannot enter and search it unless he has a warrant from a Magistrate to do so. Clause (a) of the second proviso to section 41(4), which empowers the recovery of tax on goods found in the dealer's office etc., i.e., even before its sale which is the taxable event, is repugnant to the entire scheme of the Act and is void for repugnancy. Since clause (a) of the second proviso to section 41(4) is not severable from the other provisions of the sub-section, the entire sub-section (4) with the two provisos falls. [The Supreme Court did not decide the general question whether a power to confiscate goods which are found on search and which are not entered in the account books of the dealer is an ancillary power necessary for the purpose of stopping evasion of sales tax.] The Supreme Court disagreed with the view of the Madras High Court in *Shri Ramkishan Srikishan Jhaver and Others v. Commissioner of Commercial Taxes and Others* [1965] (16 S.T.C. 708) on the interpretation and validity of section 41(2) and (3) but affirmed the decision on other grounds.—COMMISSIONER OF COMMERCIAL TAXES AND OTHERS *v.* RAMKISHAN SHRIKISHAN JHAVER AND OTHERS [1967] 20 S.T.C. 453 (S.C.).

—Where the taxable event has been completed and the tax has become exigible seizure and confiscation in a case arising under section 42(3) of the Madras General Sales Tax Act, 1959, will not be illegal. In such a case the power to seize and confiscate is ancillary to the power to levy tax, as it empowered the authorities to take reasonable steps to ensure that the tax is not evaded. *Commissioner of Commercial Taxes v. R. S. Jhaver* [1967] (20 S.T.C. 453) explained and distinguished. *R. S. Jhaver v. Commissioner of Commercial Taxes* [1965] (16 S.T.C. 708) and *Papanna v. Deputy Commercial Tax Officer* [1967] (19 S.T.C. 506) referred to.—K. P. ABDULLA & BROS. *v.* CHECK POST OFFICER, KANDAIGOUNDANCHAVADI, COIMBATORE [1968] 22 S.T.C. 260 (Mad.). There was an appeal against this decision. The decision on appeal is given below:—

—Section 42(3) of the Madras General Sales Tax Act, 1959, is unconstitutional and invalid. Section 42(3) is substantially in *pari materia*, if not identical, with section 41(4), the only difference being that unlike the latter, which provides for goods searched and seized in the premises of the dealer, which are not accounted for, the former concerns itself with goods under transport by any vehicle or boat across the check post or barrier, and not covered by the specified documents. Except for this difference, which is quite inconsequential from the standpoint of the question of invalidity, clause (a) of the second proviso to section 42(3) is word for word identical with clause (a) of the second proviso to sec. 41(4). The separate and independent reasoning on the basis of which the High Court in *R. S. Jhaver v. Commissioner of Commercial Taxes* [1965] (16 S.T.C. 708) and the Supreme Court in *Commissioner of Commercial Taxes v. R. S. Jhaver* [1967] (20 S.T.C. 453) struck down section 41(4) as invalid apply with equal force to the invalidity of section 42(3). The conclusion of the High Court in *R. S. Jhaver v. Commissioner of Commercial Taxes* [1965] (16 S.T.C. 708) that the power to confiscate goods is not ancillary or incidental to the power to levy tax on sale or purchase of goods rested entirely on the scope and ambit of entry 54 in List II of the Seventh Schedule to the Constitution and not on the factual position whether a sale or purchase had, in a given case, taken place. This view was untouched by the Supreme Court in *Commissioner of Commercial Taxes v. R. S. Jhaver* [1967] (20 S.T.C. 453). It is not any taxable event, but it is only a taxable event which is exigible to tax at the hands of the assessee and is the subject-matter of evasion, that will come within the purview of section 42(3).—Decision of RAMAKRISHNAN, J., in *K. P. Abdulla & Bros. v. Check Post Officer, Kandai-*

goundanchavadi, Coimbatore [1968] (22 S.T.C. 260) reversed.—*K. P. ABDULLA & BROS. AND ANOTHER v. THE CHECK POST OFFICER, KANDAIGOUNDANCHAVADI, COIMBATORE, AND OTHERS* [1968] 22 S.T.C. 552 (Mad.).

—The provisions of section 28(6) and section 29(3) and (4) of the Andhra Pradesh General Sales Tax Act, 1957, are not violative of Article 14 or Article 19(1)(f) and (g) of the Constitution. Section 28(6) and section 29(3) and (4) providing for confiscation of goods are regulatory provisions designed to prevent whether actual or attempted evasion of tax and is a class by itself distinct from section 14 and therefore they do not violate Article 14. The power of seizure and confiscation is ancillary and incidental to the power to levy tax and is in the nature of a punishment and bears no relation to the actual evasion of tax. Apart from this punishment, an assessee may be liable to the penalties under section 14, in cases where, as a result of keeping unaccounted for goods, he is found to have evaded the tax. The discretion to confiscate wholly or in part is itself subject to appeal and revision and is not unguided. The provision giving the dealer a right of appeal is a sufficient safeguard against arbitrary discrimination. Confiscation of the goods being by way of imposition of penalty under the law, the provisions are immune from attack on the ground that Article 31 is violated. Under section 29(3) and (4) there is no power to levy any tax. The mere fact that the penalty is computed at five times the tax does not mean that there is a levy of tax under that section. Imposition of penalty by way of confiscation is a different kind of sanction from criminal prosecution contemplated by section 30 of the Act. They are two separate distinct remedies. The objectives of the two sanctions are different. They are independent remedies and both of them can be availed of. The provisions of section 29(3) and (4) of the Andhra Pradesh General Sales Tax Act, 1957, are different from that of section 41(4) of the Madras General Sales Tax Act, 1959, which was the subject of consideration by the Supreme Court in *Commissioner of Commercial Taxes v. R. S. Jhaver* [1967] (20 S.T.C. 453) and therefore the decision of the Supreme Court has no application. The question whether the power to confiscate goods which are found on search and which are not entered in the account books of the dealer is an ancillary power necessary for the purpose of stopping evasion of payment of sales tax is concluded by the decision in *K. S. Papanna v. Deputy Commercial Tax Officer* [1967] (19 S.T.C. 506). The Court found no reason for reopening the decision by reference to a larger Bench.—*KALANGI KRISHNA MURTY & Co. AND OTHERS v.*

THE COMMERCIAL TAX OFFICER, GUNTUR, AND OTHERS [1968] 22 S.T.C. 540 (A.P.).

—Section 17(2A) of the (Kerala) General Sales Tax Act, 1125, does not offend Article 19(1)(f) and (g) of the Constitution and is therefore not *ultra vires* the Legislature.—*M. P. KANNAN AND ANOTHER v. STATE OF KERALA* [1966] 17 S.T.C. 543 (Ker.) (F.B.).

Power to impose sales tax on brokers.—See **BROKERS.**

Power to impose sales tax on hire-purchase agreement.—See **HIRE-PURCHASE AGREEMENT.**

Power to enact provision preventing assessee from questioning assessments in prosecutions.—See **OFFENCES.**

Power to make provision for advance payment of tax.—See **ADVANCE PAYMENT OF TAX.**

Power to impose reasonable safeguards in collecting sales tax.—See *DURGA PRASAD KHAITAN v. COMMERCIAL TAX OFFICER AND OTHERS* [1957] 8 S.T.C. 105 (Cal.).

Power to make provision that sales tax collected should form part of turnover.—See **SALES TAX.**

Power to make compulsory licensing provisions for dealers in certain commodities.—See **LICENCE.**

Power to levy fee for licences.—See **LICENCE.**

Power to enact penalty of forfeiture retrospective in operation.—See *RAI BAHADUR HURDUT ROY MOTI LALL JUTE MILLS v. THE STATE OF BIHAR AND OTHERS* [1956] 7 S.T.C. 609 (Pat.) approved by Supreme Court in [1960] 11 S.T.C. 17.

Power to make provision compelling dealer to give declaration that goods are intended for resale inside State to entitle him to purchase goods free of sales tax.—See **REGISTERED DEALER.**

Power to grant exemptions and to fix different taxable minimum.—See **DISCRIMINATORY LEGISLATION.**

Sales Tax Acts in Part B States.—See *GANNON DUNKERLEY AND Co., MADRAS (PRIVATE) LTD. v. SALES TAX OFFICER, MATTANCHERI* [1957] 8 S.T.C. 347 (Ker.), *SOUTH INDIA CORPORATION (PRIVATE) LTD. v. THE SECRETARY, BOARD OF REVENUE, TRIVANDRUM* [1961] 12 S.T.C. 344 (Ker.) (F.B.) reversed by the Supreme Court in [1964] 15 S.T.C. 74 and *KENCHAPPA AND OTHERS v. SALES TAX OFFICER, FOURTH CIRCLE, BANGALORE* [1957] 8 S.T.C. 329 (Mys.).

Sales Tax Acts in Part C States.—See *MITHAN LAL AND OTHERS v. THE STATE OF DELHI AND OTHERS* [1958] 9 S.T.C. 417 (S.C.), *BHAIYALAL SHUKLA v. THE STATE OF MADHYA PRADESH AND OTHERS* [1962] 13 S.T.C. 236 (S.C.) and *INSTALMENT SUPPLY (PRIVATE) LTD. AND ANOTHER v. THE UNION OF INDIA AND OTHERS* [1961] 12 S.T.C. 489 (S.C.)—See also **WORKS CONTRACTS.**

Restrictions under Constitution**ARTICLE 286 (1) (a), (b), (2), (3).**

The cases digested below arose on the interpretation of Article 286 prior to its amendment by the Constitution (Sixth Amendment) Act, 1956.

Object of Article 286, Constitution of India.—

Under the Government of India Act, 1935, the entry in the Provincial Legislative List authorising the Provincial Legislatures to impose a tax on sale of goods was entry 48, *viz.*, "taxes on the sale of goods and on advertisements." The entry does not suggest that a legislation imposing tax on sale of goods can be made only in respect of sales taking place within the boundaries of the Province. Under section 100(3) a law could be passed by a Provincial Legislature for purposes of the Province itself. A Provincial Legislature could not, however, pass a taxation statute which would be binding on any other part of India outside the limits of the Province, but it would be quite competent to enact a legislation imposing taxes on transactions concluded outside the Province, provided that there was sufficient and a real territorial nexus between such transactions and the taxing Province. The legislative practice in regard to sales tax laws adopted by the Provincial Legislatures prior to the coming into force of the Constitution has been to authorise imposition of taxes on sales and purchases which were related in some manner with the taxing Province by reason of some of the ingredients of the transaction having taken place within the Province or by reason of the production or location of goods within it at the time when the transaction took place. They picked out one or more of the ingredients constituting a sale and made them the basis of their sales tax legislation. Assam and Bengal made among other things the actual existence of the goods in the Province at the time of the contract of sale the test of taxability. In Bihar the production or manufacture of the goods in the Province was made an additional ground. In Central Provinces and Berar it was sufficient if the goods were actually "found" in the Province at any time after the contract of sale or purchase in respect thereof was made. Such claims to taxing power led to multiple taxation of the same transaction by different Provinces and cumulation of the burden falling ultimately on the consuming public. This situation posed to the Constitution-makers the problem of restricting the taxing power of States on sales or purchases involving inter-State elements, and alleviating the tax-burden on the consumer. At the same time they were evidently anxious to maintain the State-power of imposing

non-discriminatory taxes on goods imported from other States, while upholding the economic unity of India by providing for the freedom of inter-State trade and commerce. In their attempt to harmonise and achieve these somewhat conflicting objectives they enacted Articles 286, 301 and 304.—*THE STATE OF BOMBAY AND ANOTHER v. UNITED MOTORS (INDIA) LTD. AND OTHERS* [1953] 4 S.T.C. 133 (S.C.) and *POPPATLAL SHAH v. THE STATE OF MADRAS* [1953] 4 S.T.C. 188 (S.C.).

General scheme of Article 286.—"Article 286 is in Part XII of the Constitution which deals with "Finance, Property, Contracts and Suits". It is one of the several Articles which are grouped under the heading "Miscellaneous Financial Provisions" in Chapter I of that Part. It is to be noted that it has not found a place in Part XI, Chapter I whereof deals with "Legislative Relations" including "Distribution of Legislative Powers" between Parliament and the Legislatures of States. The marginal note to Article 286 is "Restrictions as to imposition of tax on the sale or purchase of goods", which, unlike the marginal notes in Acts of the British Parliament, is part of the Constitution as passed by the Constituent Assembly, *prima facie*, furnishes some clue as to the meaning and purpose of the Article. Apart from the marginal note, the very language of that Article makes it abundantly clear that its object is to place restrictions on the legislative power of the States with respect to the imposition of taxes on the sales or purchases of goods. It will be recalled that section 100(3) of the Government of India Act, 1935, read with Entry 48 of List II of the Seventh Schedule to that Act gave power to the Provincial Legislatures to make laws with respect to "taxes on the sale of goods and on advertisements". Pursuant to the legislative power thus conferred on them the Provincial Legislatures enacted Sales Tax Acts for their respective Provinces. Although in most of those Acts "sale" was first defined as meaning transfer of the property in the goods, so as to make the passing of the property within the Province the principal basis for the imposition of the tax, yet by means of Explanations to that definition, those Acts gave extended meanings to that word and thereby enlarged the scope of their operation. The imposition of tax on the sales or purchases of goods on the basis of a very slight territorial connection or nexus resulted in what has been graphically described by Patanjali Sastri, C.J., in the passage quoted above from the majority judgment in the Bombay appeal. This imposition of multiple taxes on one and the same transaction of sale or purchase was

certainly calculated to hamper and discourage free flow of trade within India regarded as one economic unit. This undesirable state of affairs had to be put right. Therefore, while the Constitution-makers by Article 246(3) read with Entry 54 in List II of the Seventh Schedule to the Constitution conferred power on the Legislatures of Part A and Part B States to make law with respect to "Taxes on the sale or purchase of goods other than newspapers" they at the same time by Article 286 clamped on that legislative power several fetters. Broadly speaking, the fetters thus placed on the taxing power of the States are that no law of a State shall impose or authorise the imposition of a tax on the sale or purchase of goods where such sale or purchase takes place, (a) outside the State, or (b) in the course of import or export, or (c) except in so far as Parliament otherwise provides, in the course of inter-State trade or commerce, and lastly (d) that no law made by the Legislature of a State imposing or authorising the imposition of a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent. It should be noted that these are four separate and independent restrictions placed upon the legislative competency of the States to make a law with respect to matters enumerated in Entry 54 of List II. In order to make the ban effective and to leave no loophole the Constitution-makers have considered the different aspects of sales or purchases of goods and placed checks on the legislative power of the States at different angles. Thus in clause (1) (a) of Article 286 the question of the *situs* of a sale or purchase engaged their attention and they forged a fetter on the basis of such *situs* to cure the mischief of multiple taxation by the States on the basis of the nexus theory. In clause (1)(b) they considered sales or purchases from the point of view of our foreign trade and placed a ban on the States' taxing power in order to make our foreign trade free from any interference by the States by way of a tax impost. In clause (2) they looked at sales or purchases in their inter-State character and imposed another ban in the interest of the freedom of internal trade. Finally, in clause (3) the Constitution-makers' attention was rivetted on the character and quality of the goods themselves and they placed a fourth restriction on the States' power of imposing tax on sales or purchases of goods declared to be essential for the life of the community. These several bans may overlap in some cases but in their respective scope and operation they are separate and

independent. They deal with different phases of a sale or purchase but, nevertheless, they are distinct and one has nothing to do with and is not dependent on the other or others. The States' legislative power with respect to a sale or purchase may be hit by one or more of these bans. Thus, take the case of a sale of goods declared by Parliament as essential by a seller in West Bengal to a purchaser in Bihar in which goods are actually delivered as a direct result of such sale for consumption in the State of Bihar. A law made by West Bengal without the assent of the President taxing this sale will be unconstitutional because (1) it will offend Article 286(1)(a) as the sale has taken place outside the territory by virtue of the Explanation to clause (1)(a); (2) it will also offend Article 286(2) as the sale has taken place in the course of inter-State trade or commerce; and (3) such law will also be contrary to Article 286(3) as the goods are essential commodities and the President's assent to the law was not obtained as required by clause (3) of Article 286. This appears to us to be the general scheme of that Article."—*BENGAL IMMUNITY CO., LTD. v. STATE OF BIHAR AND OTHERS* [1955] 6 S.T.C. 446 (S.C.).

ARTICLE 286(1)(b)

In the course of import or export.—Under Article 286(1)(b) of the Constitution of India, while goods are in the course of import into the territory of India or while they are in the course of export out of the territory of India, if a sale takes place, sales tax cannot be levied and such sales are exempted from the levy of sales tax from the date on which Article 286 came into force. The words "in the course of" in clause (b) of Article 286(1) make the scope of the clause very wide. It is not restricted to the point of time at which goods are imported into or exported from India. The series of transactions which necessarily precede export or import of goods will come within the purview of this clause. Therefore, while in the course of that series of transactions the sale has taken place, such a sale is exempted from the levy of sales tax. The sale may have taken place within the boundaries of the State. Even then sales tax cannot be levied if the sale had taken place while the goods were in the course of import into India or in the course of export out of India.—*THE BOMBAY COMPANY LTD., ALLEPPEY, AND OTHERS v. THE STATE AND OTHERS* [1952] 3 S.T.C. 91 (Trav.-Co.). On appeal to the Supreme Court see the next para.

—Sales and purchases which themselves occasion the export or the import of the goods, as the case may be, out of or into the territory of India, come within the exemption of Article 286(1)(b) of

the Constitution of India. The view that the clause should be construed as limited in its operation only to sales and purchases effected during the transit of the goods is not correct. Export sales of commodities to foreign buyers on c. i. f. or f. o. b. terms would be exempt from sales tax under that clause. A sale by export involves a series of integrated activities commencing from the agreement of sale with a foreign buyer and ending with the delivery of the goods to a common carrier for transport out of the country by land or sea. Such a sale cannot be dissociated from the export without which it cannot be effectuated, and the sale and resultant export form parts of a single transaction. Of these two integrated activities, which together constitute an export sale, whichever first occurs can well be regarded as taking place in the course of the other. Even if the property in the goods passes to the foreign buyers and the sales are thus completed within the State before the goods commence their journey the sales must, nevertheless, be regarded as having taken place in the course of the export and are, therefore, exempt under Article 286(1)(b).—THE STATE OF TRAVANCORE-COCHIN AND OTHERS *v.* THE BOMBAY COMPANY LTD., ALLEPPEY, AND OTHERS [1952] 3 S.T.C. 434 (S.C.).

—*Held*, by PATANJALI SASTRI, C.J., MUKHERJEA, VIVIAN BOSE and GHULAM HASAN, JJ.—(1) Sales by export and purchases by import fall within the exemption under Article 286(1)(b) of the Constitution of India. (2) Purchases in the State by the exporter for the purpose of export as well as sales in the State by the importer after the goods have crossed the customs frontier are not within the exemption of Article 286(1)(b). (3) Sales in the State by the exporter or importer by transfer of shipping documents while the goods are beyond the customs frontier are within the exemption of Article 286(1)(b), assuming that the State-power of taxation extends to such transactions. The language of clause (1)(b) of Article 286 clearly requires as a condition of the exemption that the export must be of *the goods* whose sale or purchase took place in the course of export. (A) The respondents imported goods from Africa. They purchased the goods through intermediaries called “Bombay party” doing business as commission agents charging commission when the goods were on the high seas and shipped from the African port to Cochin or Quilon. Goods were not landed at Bombay. The Bombay party arranged for purchases on behalf of the respondents, got delivery of the shipping documents on payment at Bombay through a bank which advanced money against the shipping

documents and collected the same from the respondents at destination: *Held*, that the purchases were purchases which occasioned the import and therefore came within the exemption of Article 286(1)(b). (B) In certain cases the Bombay party intended the goods on their own account and sold the goods as principals to the respondents and other customers; but the goods were shipped direct to Cochin or Quilon on c. i. f. terms. The shipping documents were made out in the name of the Bombay party as consignees and were delivered to them against payment through bankers at Bombay. The Bombay party cleared the goods through their own representatives at the port of destination and issued separate delivery orders to the respondents and other customers for the respective quantities ordered: *Held*, that the respondents’ purchases could only be described as purchases from the Bombay party of the goods within the State and therefore they did not come within the exemption of Article 286(1)(b). *Per DAS, J.*—A sale or purchase “in the course of” import or export within the meaning of clause (1)(b) includes (i) a sale or purchase which itself occasions the import or export, (ii) a sale or purchase which takes place while the goods are on the high seas on their import or export journey, and (iii) the last purchase by the exporter with a view to export and the first sale by the importer to a dealer after the arrival of the imported goods. If a sale or purchase takes place within a State, either under the general law or by reason of the Explanation, then, if it takes place in the course of import or export as explained above, no State, not even the State within which such sale or purchase takes place can tax it by reason of clause (1)(b).—THE STATE OF TRAVANCORE-COCHIN AND OTHERS *v.* THE SHANMUGHA VILAS CASHEW-NUT FACTORY AND OTHERS [1953] 4 S.T.C. 205 (S.C.).

—Purchases of cashew-nuts made and completed locally, though meant for subsequent export, are liable to State sales tax.—A. M. MATHEW *v.* THE STATE OF TRAVANCORE-COCHIN AND ANOTHER [1954] 5 S.T.C. 1 (Trav.-Co.).

—The assessee-mill was obliged to allocate under the Cotton Textiles (Export Control) Order, 1949, a portion of the yarn or cloth produced by it for export outside India. The assessee had no export licence and therefore it sold the goods to another and the latter exported the goods outside India: *Held*, that the assessee was not entitled to the exemption under Article 286(1)(b) of the Constitution in respect of the turnover of the sales of yarn which it effected to the exporter. Under Article 286(1)(b) of the Constitution, the

sale and the export which are treated as integrated activities are alone exempt if the sale is the occasion for the export and it commences from the time when the agreement of sale is entered into with the foreign buyer. A purchase anterior to it by the exporter and a sale to the exporter by another person would not be within the limits of integrated activity as defined by the Supreme Court. Both the purchase by the exporter and the sale by the assessee to the exporter are beyond the limits and therefore cannot be treated as a sale in the course of export which attracts the exemption.—*THE MAHALAKSHMI TEXTILE MILLS LTD. v. THE STATE OF MADRAS* [1954] 5 S.T.C. 252 (Mad.).

—The turnover of the assessee represented the sale price of certain goods which the assessee exported outside the Indian territory. The contract for sale with the foreign buyers was entered into on the 26th October, 1949, the goods were booked on the 25th January, 1950, at Mangalore, and the ship left the port on the 28th January, 1950. The usual course of business was that the foreign buyers opened a letter of credit which was confirmed by the branch of the Imperial Bank at Mangalore and after shipment drafts were drawn which were discounted by the assessee at the Imperial Bank at Mangalore. The bill of lading was taken to the order of the seller but the insurance was paid by the buyer: *Held*, that viewed from whatever point either under the law before the Constitution came into force on the 26th January, 1950, or under Article 286(1)(b) after the Constitution came into force, the assessee was not liable to pay tax on the sale price of the goods exported. *Commissioner of Income-tax, Madras v. Mysore Chronicle Ltd.* [1951] (20 I.T.R. 546) referred to.—*THE STATE OF MADRAS v. MYSORE LACHIA SHETTY & SONS LTD.* [1954] 5 S.T.C. 303 (Mad.).

—Purchase of goods for purposes of export is not exempted under Article 286(1)(b) of the Constitution.—*THE STATE OF MADRAS v. EASTERN SUPPLIES LTD.* [1954] 5 S.T.C. 344 (Mad.).

—*Sale in the course of export—Licensed dealer—Purchase of untanned hides and skins and subsequent export—Levy of tax on purchase—Legality—Whether a sale or purchase in the course of export.*—A purchase for the purpose of export could not be regarded as an act done in the course of the export of the goods within the meaning of Article 286(1)(b) of the Constitution. Purchases of untanned hides and skins with a view to their ultimate export are not exempt from taxation under Article 286(1)(b) on the ground of they being purchased in the course of export.—*THE*

STATE OF MADRAS v. K. H. CHAMBERS LTD. AND OTHERS [1955] 6 S.T.C. 157 (Mad.).

—Explanation 2 to section 2(h) of the Madras General Sales Tax Act, 1939, would determine *locus* of the sale for the purpose of liability to sales tax except to the extent that such sales are taken out of the purview of tax liability by the Constitution of India. What is characterised by the Supreme Court in *State of Travancore-Cochin v. Bombay Company Ltd., Alleppey* [1952] (3 S.T.C. 434) as an “export sale” is one in which the local seller figures as an exporter, privity having been established between him and the foreign buyer, either through direct negotiation or dealing, or through the local representatives of the latter. There will therefore be an “export sale” only where the sale is to a foreign buyer with whom the local seller has privity and when as a direct result of such sale the goods are transported across the customs frontier. Even if there is no export sale, if the sellers are able to establish that they continued to be the owners of the goods up to or beyond the time when the goods entered the export stream or until after the goods had crossed the customs barrier, the sale by them would be one “in the course of export” to which Article 286(1)(b) would apply. The assesseees were dealers in pepper having their head office in Bombay and a branch at Kozhikode in the Madras State. The assesseees’ head office entered into three contracts for sale of pepper. These contracts were signed in Bombay by the assesseees as sellers and three different firms in Bombay as buyers. The first two contracts which were for delivery in London and Tunis respectively were on C. and F. terms while in the third contracts the goods were to be shipped to Odessa and price was on F.O.B. terms. In the first contract* the price was to be in Indian currency, 95% cash against shipping documents and the balance of 5% to be adjusted after weighing of the goods in London. The goods, after being packed and marked with the initials of the buyers, were transferred by rail from Calicut, where they were at the time of the agreement of sale, to Cochin. The goods were then shipped from Cochin port to London and bills of lading were taken in the name of the buyers and were deliverable to their order. Freight was to be paid at destination. The Bombay office of the assesseees after receiving the bills of lading prepared a pro-forma invoice and despatched the documents to the buyers. In the invoice it was stated that the goods had been shipped by the assesseees “on account and risk of” the buyers.

*[The facts in the other two contracts are similar and are therefore not stated here—Ed.]

The freight payable at destination was deducted from the price and the invoice made a claim for 95% of the agreed price. The assessee received a cheque for this sum at Bombay and the balance of 5% was received by them after weighment etc., in London. The Sales Tax Authorities held that the sales made by the assessee were internal sales having no export element in them and were therefore not entitled to the exemption under Article 286(1)(b) of the Constitution: *Held*, (1) that the sales made by the assessee were not "export sales" as explained by the Supreme Court in the *First Travancore* case [1952] (3 S.T.C. 434); (2) that they were however "sales in the course of export" entitling the assessee to the constitutional exemption under Article 286(1)(b) inasmuch as the property in the goods did not pass to the buyers until the relevant bills of lading were presented to the buyers or in any event at least not until the goods were put on board the vessels at Cochin harbour.—*GANDHI SONS LTD. v. THE STATE OF MADRAS* [1955] 6 S.T.C. 694 (Mad.).

—The Indian Coffee Board claimed exemption under Article 286(1)(b) of the Constitution in respect of certain sums paid by persons, who were registered exporters holding certificates of registration issued by the Board, against delivery of coffee from out of the pool under the control of the Board to enable those persons to export that coffee outside India. Under the terms of the contract between the registered exporter and the Board if the exporter failed to export the coffee within the time allowed by the Board, it could call upon him either to pay liquidated damages or to deliver back to the Board the coffee at the market rate that prevailed then. The Tribunal found that the sale completed by the delivery of the coffee to the registered exporter was within the State of Madras and that the ownership of the coffee delivered for export was transferred from the Board to the registered exporter: *Held*, that the transaction between the registered exporter and the Board under which the registered exporter paid the price and obtained delivery of the goods was a sale and as that sale was a sale for export, it was not entitled to the exemption under Article 286(1)(b). It was only the contract of sale entered into by the registered exporter with the buyer abroad that could be brought within the scope of Article 286(1)(b).—*THE INDIAN COFFEE BOARD, BATLAGUNDU v. THE STATE OF MADRAS* [1956] 7 S.T.C. 135 (Mad.).

—Sale in the course of export—Licensed dealer—Purchase of untanned hides and skins and subsequent export—Levy of tax on purchase price—Legality—Whether contravenes

Article 286(1)(b)—Scope of Article 286(1)(b).—See *HIDES AND SKINS*.

—In order that there could be an export in the real sense of the term, there must be a seller in India, a buyer outside India and sending of goods from India to places outside India. Once a sale was complete inside India the seller could not claim the protection of Article 286(1)(b) by virtue of what happened afterwards. Aviation spirit supplied to aircraft which proceeded from Dum-Dum Aerodrome to foreign destinations was taxable under the Bengal Motor Spirit Sales Taxation Act, 1951, as amended by the Bengal Motor Spirit Sales Taxation (Second Amendment) Act, 1954. Such supplies were not exempt either under Article 286(1)(a) or Article 286(1)(b) of the Constitution.—*BURMAH SHELL OIL STORAGE AND DISTRIBUTING COMPANY OF INDIA LTD. v. COMMERCIAL TAX OFFICER AND ANOTHER* [1957] 8 S.T.C. 142 (Cal.) affirmed by Supreme Court in [1960] 11 S.T.C. 764. See below.

—*Aviation spirit supplied at aerodrome for user of aircraft bound for foreign countries*.—Every sale or purchase preceding the export is not necessarily to be regarded as in the course of export within the meaning of Art. 286(1)(b). It must be inextricably bound up with the export, and a sale or purchase unconnected with the ultimate export as an integral part thereof is not within the exemption. Sales or purchases for the purpose of export are not protected, unless the sales or purchases themselves occasion the export and are an integral part of it. While all exports involve a taking out of the country, all goods taken out of the country cannot be said to be exported. The test is that the goods must have a foreign destination where they can be said to be imported. It matters not that there is no valuable consideration from the receiver at the destination end. If the goods are exported and there is sale or purchase in the course of that export and the sale or purchase occasions the export to a foreign destination, the exemption is earned. Purchases made by philanthropists of goods in the course of export to foreign countries to alleviate distress there, may still be exempted, even though the sending of the goods was not a commercial venture but a charitable one. The crucial fact is the sending of the goods to a foreign destination where they would be received as imports. The Explanation to Article 286(1)(a) of the Constitution can apply only if more than one State is involved in the same transaction. When there is no other State in which the goods can be said to be delivered for consumption, apart from the State where the property in the goods passed, the Explanation is not needed as a key.

The power of a State to tax in those circumstances, which is exercisable by virtue of transfer of title to the property, can only be taken away if there be some other State in which the goods as a direct result of the sale were delivered for consumption. But if there is no such other State, the question regarding the application of the Explanation to Article 286 (1) (a) does not arise. The appellants dealt in petroleum and petroleum products and carried on business at Calcutta. They maintained supply depots at Dum-Dum Airport from which aviation spirit was sold and delivered to aircraft proceeding abroad for their consumption. The question was whether these supplies to the aircraft which proceeded to foreign countries were liable to sales tax under the Bengal Motor Spirit Sales Taxation Act, 1941. The appellants contended that such sales were made in the course of export of such aviation spirit out of the territory of India, that they took place outside the State of West Bengal, that inasmuch as aviation spirit was delivered for consumption outside West Bengal, the sales could not fall within the Explanation to clause (1)(a) of Article 286 and that unless they could be said to become "Explanation sales", the power to tax did not exist: *Held*, (1) that to exclude the powers of taxation of the State of West Bengal, the appellants must be able to point out some other State where the goods could be said to have been delivered as a direct result of the sale for the purpose of consumption in that other State and as the appellants had not done so they could not invoke the Explanation to Article 286(1)(a); (2) that aviation spirit loaded on board an aircraft for consumption, though taken out of India, was not exported since it had no destination, where it could be said to be imported and so long as it did not satisfy this test it could not be said that the sale was in the course of export. Moreover aviation spirit was sold for the use of the aircraft and the sale was not even for the purpose of export. The sales therefore did not come within Art. 286(1)(b); (3) that all the elements of sale including delivery and payment of price took place within the State of West Bengal and the sales were thus completely within the territory of that State. The sales were therefore liable to be taxed under the Bengal Motor Spirit Sales Taxation Act, 1941. The customs barrier does not set a terminal limit to the territory of West Bengal for sales tax purposes. The sale beyond the customs barrier is still a sale, in fact, in the State of West Bengal. The Explanation to Article 286(1)(a) is only a key to find out which of the States is competent to tax and which are not, and is by no means a definition of an "outside

sale". It is an Explanation, which determines which State out of those connected with the transaction of sale can tax it. Any State claiming to tax a sale of goods on the ground that it was completed by the passing of property in the goods in that State could not do so, if the goods as a direct result of the sale were delivered for the purpose of consumption in another State. The Explanation creates a fiction that the sale must be deemed to have taken place in the latter State and not in the State where the sale was completed by reason of passing of property. Where more than one State is involved, any State claiming to tax the sale by reason of something anterior to the passing of property would not be able to claim that the sale took place there unless it was also the State of delivery, because the sale is complete only on the passing of property, and till the sale is complete, liability to tax does not arise. Once the sale is complete, the delivery State gets the right to tax the sale by the fiction introduced (8 S.T.C. 142) affirmed.—BURMAH SHELL OIL STORAGE AND DISTRIBUTING CO., OF INDIA LTD. AND ANOTHER *v.* COMMERCIAL TAX OFFICER AND OTHERS [1960] 11 S.T.C. 764 (S.C.).

—Where the appellants sold to a firm of exporters some goods covered by the exporters' export licence under an F.O.B. contract which showed that the bills of lading were to be made out in the name of the exporters but the price was to be paid to the appellants only on presentation of the bills of lading: *Held*, that the sale was effected after the goods had entered the export stream or had passed the customs barrier and therefore the sale attracted the provisions of Article 286 of the Constitution of India and was exempt from taxation. One test which is fairly simple and easy and which is almost infallible in these matters is to see whether the exporter could have diverted the goods which he had purchased to any purpose other than the purpose of export. Inasmuch as the exporter in this case only got delivery of the goods by means of the documents of title after they had crossed the customs barrier it could not be suggested that he could have made any other use of the goods except exporting them outside India. The word "person" in the second proviso to section 8(b) of the Bombay Sales Tax Act, 1953, must be read to mean a registered dealer.—DAULATRAM RAMESHWARLAL *v.* B. K. WADEYAR [1957] 8 S.T.C. 617 (Bom.) affirmed by Supreme Court in [1960] 11 S.T.C. 757. See below.

—If, in respect of a sale, the property in the goods passes to the buyer after the goods have, for the purpose of export to a foreign country,

crossed the customs frontier, the sale is said to have taken place "in the course of export" and is therefore exempt from taxation under Article 286(1)(b) of the Constitution. In the case of a F.O.B. contract, in the absence of special agreement, the property in the goods does not pass until the goods are actually put on board. The question whether there was such an agreement has to be decided on a consideration of all the surrounding circumstances. In the case of certain sales on F.O.B. contracts, the bill of lading was taken in the name of the buyer but was retained by the seller till payment of price and the export was under the buyer's export licence. Moreover under clause 5(2) of the Export Control Order, 1954, the goods should be the property of the licensee at the time of export: *Held*, that these circumstances would not justify a conclusion that the parties came to a special agreement that though the sales were on F.O.B. contracts, property in the goods would pass to the buyer at some point of time before shipment. The intention of the parties that in compliance with the requirements of clause 5(2) of the Export Control Order the goods shall be the property of the licensee at the time of the export would mean nothing more than that the property in the goods shall pass immediately before the ship goes beyond the territorial waters of the country, or at the earliest when the ship leaves the port. The words "a person" in section 10(b) of the Bombay Sales Tax Act, 1953, should be interpreted to mean a "registered dealer". (8 S.T.C. 617) affirmed.—*B. K. WADEYAR, SALES TAX OFFICER, IV DIVISION, LICENCE CIRCLE, BOMBAY v. MESSRS DAULATRAM RAMESHWARLAL* [1960] 11 S.T.C. 757 (S.C.).

—A sale effected for the purpose of exporting the goods outside the State is not saved by Article 286(1)(b) of the Constitution.—*S. ALLAUDDIN SAHIB & Co., CUDDAPAH v. THE COMMERCIAL TAX OFFICER, CUDDAPAH* [1958] 9 S.T.C. 14 (A.P.).

—Purchase of goods within the State with a view to export them to foreign countries are not entitled to the exemption under Article 286(1)(b) of the Constitution. By imposing tax on such purchases the Legislature does not expressly or by necessary implication impose any tax on exports. These purchases fall within the legislative ambit of the State and no question of any fraud on power can arise as the power is exercised within the strict confines allocated to the State.—*GORANTLA BUTCHIAH CHOWDARY AND OTHERS v. THE STATE OF ANDHRA (NOW ANDHRA PRADESH)* [1958] 9 S.T.C. 104 (A.P.) affirmed by Supreme Court in [1962] 13 S.T.C. 529. See below.

—It is only the sale under which the export is made that is protected by Article 286(1)(b) of the Constitution. A purchase which precedes such a sale does not fall within its purview though it is made for the purpose of, or with a view to, export. (9 S.T.C. 104) affirmed.—*EAST INDIA TOBACCO Co. v. STATE OF ANDHRA PRADESH* [1962] 13 S.T.C. 529 (S.C.).

—The expression "in the course of" in Article 286(1)(b) of the Constitution before its amendment by the Constitution (Sixth Amendment) Act, 1956, postulate that the transaction of sale must be an integral part of the activity of exporting the goods out of the country. In order to attract exemption under that clause it is necessary for the assessee to show that the sale took place not only during the activities directed towards the export of the goods out of the country but also that the sale was a part of the activities of such export. Consequently a contract for the sale of goods and the subsequent despatch of such goods by the assessee from Bihar to firms in Calcutta for the purpose of export of such goods outside India was not exempt under Article 286(1)(b). In order to claim the exemption under Article 286(1)(a) it was necessary for the assessee to prove that the goods had been sold to the Calcutta firms for the purpose of delivery and consumption in the State of West Bengal. In the case of sale of goods despatched outside the State and consumed in States other than the State of first destination, only one ban is attracted, namely, the ban imposed by Article 286(2), and not the ban imposed by the Explanation to Article 286(1)(a), and, therefore, sales falling under this category has only one hurdle to surmount, namely, the hurdle imposed by Article 286(2), and that hurdle is surmounted by the President's Sales Tax Continuance Order, 1950, and by the Sales Tax Laws Validation Act, 1956, for the period from the 26th January, 1950, to the 6th September, 1955.—*MAHADEO RAM BALI RAM v. THE STATE OF BIHAR* [1958] 9 S.T.C. 173 (Pat.).

—Under Article 286(1)(b) of the Constitution of India prior to its amendment by the Constitution (Sixth Amendment) Act, 1956, only the sale that occasions the export is exempt. The sale to the exporter that preceded it is not exempt under that clause, even if it was made "with a view to" or "for the purpose of", export.—*THE STATE OF MYSORE AND ANOTHER v. THE MYSORE SPINNING AND MANUFACTURING Co., LTD. AND OTHERS* [1958] 9 S.T.C. 188 (S.C.).

—Where certain contracts for the sale of goods specifically provided that the property in the goods sold would pass to the vendees only after

delivery of the shipping documents, property in the goods passed only after the goods crossed the customs barrier and got into the stream of export and such sales were therefore sales in the course of export within the meaning of Article 286(1)(b) of the Constitution and were exempt from taxation. Where sales were completed before export and it was the buyer that exported the goods, exemption under Article 286(1)(b) could not be claimed.—*Haji Abdul Gaffoor Sahib & Co. v. The State of Madras* [1958] 9 S.T.C. 208 (Mad.).

—The appellant, who purchased teas at public auctions in Calcutta, appropriated the goods to his contract with Bombay parties, soon after the purchase, and thereafter shipped the goods outside India in the names of the Bombay parties and according to their instructions: *Held*, that the appellant was not entitled to the exemption under Article 286(1)(b) inasmuch as what was taxed were the sales by the appellant in favour of the Bombay parties and not the sales by the Bombay parties in favour of outsiders and title to the goods had passed in favour of the Bombay parties long before the goods were entrusted to the carrier.—*Gordhandas Lalji v. B. Banerjee and Others* [1958] 9 S.T.C. 581 (S.C.).

—By reason of the Colliery Control Order, 1945, if the Government directed the petitioner who was dealing in coal, to sell coal to parties outside India and if the petitioner delivered the goods to the shipping agents as directed by the Government that would be a sale in the course of export and would be entitled to the exemption under Article 286(1)(b) of the Constitution. If, however, the petitioner sold the goods to the Government who then delivered it to the shipping agents, the petitioner would not be entitled to the exemption under Article 286(1)(b).—*Sunil Kumar Roy v. Commercial Tax Officer and Another* (No. 1) [1959] 10 S.T.C. 14 (Cal.).

—*Machineries earmarked by manufacturers outside India for sale to Corporation—Whether sale “in the course of import”*.—In order to attract the exemption under Article 286(1)(b) of the Constitution of India as it stood prior to its amendment by the Constitution (Sixth Amendment) Act, 1956, it was necessary for an assessee to show that the sale took place not only during the activities directed towards the import of goods from outside the country, but also that the sale was a part of the activities of such import. The assessee with its head office in Calcutta supplied machineries to the Damodar Valley Corporation. The assessee contended that the sales were exempt under Article 286(1)(b) of the Constitution inasmuch as the machineries were earmarked by the manufacturers outside India for sale to the Corporation:

Held, that the sale were not exempt under Article 286(1)(b). In the case of sale of goods despatched outside the State and consumed in States other than the State of first destination, only one ban is attracted, namely, the ban imposed by Article 286(2), and not the ban imposed by the Explanation to Article 286(1)(a), and, therefore, sales falling under this category have only one hurdle to surmount, namely, the hurdle imposed by Article 286(2), and that hurdle has been surmounted by the President's Sales Tax Continuance Order, 1950, and by the Sales Tax Laws Validation Act, 1956, for the period from the 26th January, 1950, to the 6th September, 1955.—*Blackwood Hodge (India) Limited v. The State of Bihar and Another* [1960] 11 S.T.C. 41 (Pat.).

—*Sale by transfer of shipping documents against payment while goods are on high seas*.—(i) The course of import of goods within the meaning of Article 286(1)(b) of the Constitution of India before its amendment by the Constitution (Sixth Amendment) Act, 1956, starts at a point when the goods cross the customs barrier of the foreign country and ends at a point in the importing country after the goods cross the customs barrier. (ii) The sale which occasions the import is a sale in the course of import. (iii) A purchase by an importer of goods when they are on the high seas by payment against shipping documents is also a purchase in the course of import. (iv) A sale by an importer of goods, after the property in the goods passed to him either after the receipt of the documents of title against payment or otherwise, to a third party by a similar process is also a sale in the course of import. Where the petitioners entered into contracts with the Government of India for the sale of foreign sugar, obtained the requisite licence from the Government, opened letters of credit, placed orders with foreign companies, engaged steamer on charter terms, took delivery of the goods from the foreign companies and, when the goods were on the high seas, delivered the documents of title to the Government against payment and the Government, taking the licence from the petitioners, cleared the goods at the Bombay harbour: *Held*, that the sales by the petitioners to the Government were sales in the course of import within the meaning of Article 286(1)(b) of the Constitution and were therefore not liable to be taxed.—*J. V. Gokal & Co. (Private) Ltd. v. The Assistant Collector of Sales Tax (Inspection) and Others* [1960] 11 S.T.C. 186 (S.C.).

—*Goods imported into Bihar from outside India against specific orders of Corporation—Whether sales exempt*.—Where the assessee contended that the

goods delivered to the Damodar Valley Corporation in Bihar were imported into Bihar from outside the territory of India against their specific orders and as such were exempt from taxation under Article 286(1)(b) of the Constitution: *Held*, (i) that the sales were not exempt from taxation under Article 286(1)(b); (ii) that if the assessee had been able to prove that he was only an agent for the foreign seller and there was privity of contract between the Damodar Valley Corporation and the foreign seller with regard to all the sales, the matter would come within the ambit of the ruling of the Supreme Court in *State of Travancore-Cochin and Others v. Shanmugha Vilas Cashew-nut Factory* [1953] (4 S.T.C. 205); (iii) that the question whether the assessee was merely acting as an agent of the foreign seller was a question of fact which had not been investigated before any Sales Tax Authority and the question could not be raised for the first time in the High Court in the hearing of the reference.—*WILLIAM JACKS AND COMPANY LIMITED v. THE STATE OF BIHAR* [1960] 11 S.T.C. 242 (Pat.). [On another point there was an appeal to the Supreme Court from the decision of the High Court and the Supreme Court reversed the decision on that point.—See [1963] 14 S.T.C. 375 at page 378.]

—*Purchase by spinning mill in Madras State of cotton imported from abroad by Bombay dealers.*—The assessee, a spinning mill at Tirupur in the Madras State, was assessed to tax under rule 4-A(iv) on its purchases of cotton which had been imported from Africa by certain Bombay dealers. The assessee intimated its requirements to the Bombay dealers who placed orders with the suppliers in Africa and directed the shipments from African ports to Cochin. The assessee, in the meantime, obtained the necessary transport licence. The shipping documents were in the name of the Bombay dealers who sent them to their clearing agents at Port Cochin. The clearing agents presented the shipping documents, cleared the goods through the customs, despatched the goods by rail to the assessee at Tirupur and sent the railway receipts through bank. The assessee paid the price into the bank against delivery of railway receipts. The question was whether the assessee was not liable to be taxed by virtue of the provisions of either Article 286(1)(b) or Article 286(2) of the Constitution: *Held*, (1) that the purchases of cotton effected by the assessee were made after the cotton had been imported into India by the Bombay dealers and after the cotton had crossed the customs frontiers and they were therefore not entitled to the exemption under Article 286(1)(b); (2) that the purchases satisfied both the requirements of the Explanation to Article 286(1)(a), inasmuch as the actual

delivery to the assessee as buyer was only at Tirupur and the delivery was for consumption within the Madras State. Therefore the Madras State had the right to tax the sales, once the Parliament lifted the ban on taxation of sales or purchases in the course of inter-State trade or commerce.—*DHANALAKSHMI MILLS LTD. v. THE STATE OF MADRAS* [1960] 11 S.T.C. 306 (Mad.).

—*Sale to ocean-going ships of goods from bonded warehouse inside port—Customs frontier—Meaning of.*—The customs frontier as defined by the Government of India by notification dated 1st April, 1937, issued under the Government of India Act, 1935, must be regarded as the same as the frontier of India and this frontier extends along the sea to a width of six miles, which, according to law has been declared as the territorial water belt. As soon as that frontier is crossed by the goods, the import within the meaning of the Supreme Court's decision must be regarded as complete. The one and the important condition required to make a sale an export sale is that the delivery of the goods should be effected to the common carrier for the purpose of delivery to the buyer at the other end in the foreign country. Consequently the sale of furnace oil and other petroleum products by the Burmah-Shell Oil Storage and Distributing Company of India Limited to the ocean-going ships directly from the bonded warehouse of Vizagapatnam port was not a sale in the course of import or export within the meaning of Article 286(1)(b) of the Constitution and as such was not exempt from the levy of sales tax under that article. The moment the oils and petroleum products crossed the outer limit of the territorial sea abutting the shores of Vizagapatnam, and entered the territorial water limits of India, the goods must be regarded as having crossed the customs frontier and once the customs frontier was crossed the exemption under Article 286(1)(b) would vanish, as the goods must be regarded as having ceased to be in the course of import. Any sale effected thereafter, whether in the limits of the territorial sea or on land, from out of bonded warehouse, would be subject to sales tax, not being covered by the exemption under Article 286(1)(b). Sale of furnace oil etc. to ocean-going ships takes place then and there for the consumption of the purchaser. There is no question of any export involved in the case. Even though the Deputy Commissioner of Commercial Taxes confirmed the assessment on the appeal preferred by an assessee, he would still have the power of revision under section 12(2) of the Madras General Sales Tax Act, 1939, and so long as he complied with the requirements of notice under section 12(4) any order of enhancement passed by him

cannot be attacked on grounds of jurisdiction.—**BURMAH-SHELL OIL STORAGE AND DISTRIBUTING COMPANY OF INDIA LIMITED, VIZAGAPATNAM v. THE STATE OF ANDHRA PRADESH** [1960] 11 S.T.C. 533 (A.P.).

—*Sale of imported milk powder.*—The assessee selling imported milk powder took delivery of the documents of title on payment of the value to the bank and handed them over to the clearing agent. In the meantime the assessee entered into contracts of sale with buyers and issued delivery orders to them. The clearing agent cleared the goods on behalf of the assessee, received the full value from the buyers to whom the assessee had issued delivery orders and delivered the goods to them. The question was whether the sales by the assessee to the buyers were exempt from tax under Article 286(1)(b) of the Constitution: *Held*, that the buyers from the assessee obtained title to the goods only at the point of delivery and the sales were therefore sales within the State after completion of the import and were taxable. Whether the contract of sale was entered into while the goods were still on the high seas was not material because this was not a case of transfer of title to the goods by transfer of shipping documents from the assessee to the buyers. The issue of delivery order subsequent to or even simultaneously with the contract of sale could not suffice to transfer title to the goods sold, because what was sold was an unascertained and unappropriated portion of a mass of goods yet to arrive in India. The appropriation was only at the point of delivery, and that delivery was effected only after the goods had been cleared by the assessee's clearing agent.—**ARUN (1953) (PRIVATE) LTD. v. THE STATE OF MADRAS** [1960] 11 S.T.C. 723 (Mad.).

—*Sale of coal for consumption of steamers going abroad—Whether in the course of export.*—See **STATE OF KERALA v. COCHIN COAL CO.** [1961] 12 S.T.C. 1 (S.C.).

—*Concept of export—Scope of Article 286(1)(b).*—The concept of export in Article 286(1)(b) of the Constitution postulates the existence of two termini as those between which the goods are intended to move or between which they are intended to be transported, and not a mere movement of goods out of the country without any intention of their being landed in specie in some foreign port.—**STATE OF KERALA v. COCHIN COAL CO.** [1961] 12 S.T.C. 1 (S.C.).

—*Sale to ocean-going vessels of goods from customs bonded warehouse—Whether exempt.*—The assessee, who imported fuel or furnace oil, kept the oil in customs bonded warehouse and delivered it

to ocean-going vessels in pursuance of sale contracts. The assessee contended that so long as customs duty had not been paid on the goods imported and they were kept in customs bonded warehouse, they must be deemed to be in the course of import and the sales would not be taxable by reason of Article 286(1)(b) of the Constitution: *Held*, that when once the goods had been permitted to be imported and the import duty on the goods had been levied by the customs officers, the course of import ended whether or not the goods were immediately cleared for home consumption or were only kept in the bonded warehouse. The mere fact that the assessee, for the purpose of their own convenience, warehoused the goods and thereby postponed the payment of the duty levied on the goods could not be taken to indicate that the goods were still beyond the customs frontier. The sales were therefore not in the course of import and were not exempt under Article 286(1)(b).—**THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES v. CALTEX (INDIA) LTD., MADRAS** [1962] 13 S.T.C. 163 (Mad.).

—*Delivery of documents to local banks—Whether banks agents of foreign buyers.*—The assessee, licensed dealers in hides and skins had entered into contracts with foreign buyers and delivered the shipping documents to the local banks against payment of price. They contended that the local banks should be deemed to be the agents of the foreign buyers who should, therefore, be assessed as last purchasers in the State: *Held*, that the sales by the assessee to the foreign buyers were sales in the course of export and exempt under Article 286 of the Constitution, that the banks did not function as the agents of the foreign buyers for taking possession of the goods, that the foreign buyers were not the last purchasers before export and that therefore the assessee were rightly assessed to sales tax as last purchasers.—**E. K. MOHAMMED IBRAHIM SAHIB AND SONS v. GOVERNMENT OF MADRAS** [1962] 13 S.T.C. 343 (Mad.).

—*Sale to foreign buyer through agent.*—A sale by a dealer in the State to a foreign buyer outside the Indian territory is a sale which occasions an export and may be called a direct export sale. No State law can impose a tax on such export sales. A sale in the course of export is something different from a direct export sale as such a sale need not be to a foreign buyer but can be made by a dealer in the State so as to pass the property in the goods sold after exportation. Where there is privity of contract between the foreign buyer and the seller in the taxing territory and the concluded sale between them occasions the

export even if the property in the goods sold passes within the territory, the transaction is nevertheless one in respect of which Article 286 imposes a ban on the State to levy tax: *Held*, on the facts of the case, that the sales through agents were in the course of export and exempt under Article 286(1)(b).—*M. R. K. ABDUL SALAM AND Co. v. GOVERNMENT OF MADRAS* [1962] 13 S.T.C. 629 (Mad.).

—*Contracts of sale with exporting firms—Whether exporting firms act as agents of assessee.*—An export sale is one which is effected between a seller in the State and a buyer outside the Indian territory. The foundation of such a sale is the contract between the two in respect of goods forming the subject-matter of the sale. The contract can be entered into directly between the seller and the buyer or it can be brought about by their respective agents duly authorised in that behalf. There cannot be an export sale without this essential element of a privity of contract between the two contracting parties. Neither the fact that the seller consigns the goods to another for the purpose of shipment and transit to a foreign territory, nor the fact that the seller includes in his price for the goods sold costs, insurance, freight and all other charges and expenses incidental to place the goods on board the ship nor even the fact that the local person who obtains delivery from the seller charges commission and brokerage to the account of the seller, can afford any evidence of a contract between the local seller and the foreign buyer. The absence of a contract either in the form of an actual agreement signed by the seller and the buyer or their respective agents or in the form of letters between the buyer and the seller evidencing the terms of the agreement, is definitely fatal to any claim that any sale transaction by a local dealer is an export sale hit by the provisions of Articles 286 of the Constitution. Delivery of the goods by the seller to the buyer passes the property in the goods, where the seller does not reserve the right of disposal; in most cases, payment of price is made against delivery, but it is immaterial whether the time for payment is postponed after delivery. Unless a different intention appears, delivery as such operates to appropriate the goods to the contract, and results in the passing of the property in the goods from the seller to the buyer. Under the terms of a contract, the assessee delivered certain goods at the godowns of some exporting firms and was paid a part of the purchase price. When the goods were taken over by the exporting firms, they had not entered into any contract with any foreign buyers and they did not know who the ultimate buyers would be. On the question

whether the sales were exempt under Article 286(1)(b) of the Constitution: *Held*, (1) that the exporting firms did not act as the agents of the assessee in putting through the export sale; (2) that as the property in the goods passed on the delivery of the goods in the godowns of the exporting firms, the sales could not be said to be in the course of export and were not exempt under Article 286(1)(b).—*M. M. MOHIDEEN THUMBY AND Co. v. THE STATE OF MADRAS* [1962] 13 S.T.C. 805 (Mad.).

—*Contracts with exporting firms—Delivery of goods in their godowns and subsequent export—Whether sales exempt.*—Under the terms of a contract, the assessee delivered certain goods at the godown of an exporting firm in Madras. At that time the assessee did not know who the foreign buyer was. On delivery of the goods the exporting firm paid to the assessee 95 per cent. of the price of the goods sold after deducting discount, brokerage, insurance, freight etc. The balance of the price was paid to the petitioner after shipment of the goods was completed. There was nothing in the contract to indicate that the property in the goods passed only after shipment: *Held*, that the sales were purely local sales and were not exempt under Article 286(1)(b). Following *M. R. K. Abdul Salam & Co. v. The Government of Madras* [1962] (13 S.T.C. 629) it was also held that a sale in favour of G was a sale in the course of export and therefore exempt under Article 286(1)(b).—*P. HAJI ABDUL WAHAB AND BROTHERS v. THE GOVERNMENT OF MADRAS* [1962] 13 S.T.C. 824 (Mad.).

—*Purchase of ship from Indian company and sale to foreign company—Permission of Government of India obtained for sale and transfer of flag—Foreign company taking delivery of ship at Bombay harbour and sailing ship out of Indian waters—Whether sale exempt under Article 286(1)(b).*—*A. EBRAHIM AND COMPANY v. THE STATE OF BOMBAY* [1962] 13 S.T.C. 877 (Mah.).

—*Sale in the course of import—Effect of endorsing bill of lading in favour of buyer.*—A bill of lading is a writing signed on behalf of the owner of the ship in which the goods are embarked acknowledging the receipt of the goods and undertaking to deliver them at the end of the voyage subject to such conditions as may be mentioned in the bill of lading. One of the ways of effecting sale of goods, which are in the process of transit, is by endorsing the bill of lading in favour of the buyer and handing over the same to him. The delivery after endorsement of the bill of lading will be effectual in passing the property in the goods where such is the intention of the parties.

Unless there is evidence of a contrary intention between the parties, the transfer of the bill of lading with endorsement in favour of the buyer will amount to the sale of the goods and the passing of property in the goods from the seller to the buyer. Where, however, there is a contrary intention expressed by the terms of the contract, the property in the goods will not pass even on the transfer of the bill of lading with endorsement in favour of the buyer. The assessee-company entered into a contract with the Government of India for sale of large quantities of Cuban sugar on terms and conditions mentioned in a letter addressed to the assessee by the Government. After the sugar had been shipped by the foreign exporters, the bill of lading was received by the assessee, and thereupon a bill for full payment of the c.i.f. value was submitted by them to the Government along with a complete set of bill of lading and other documents in accordance with the contract. Subsequently the assessee received payment from the Government in accordance with the bills submitted by them. After the consignment of sugar arrived at Bombay, the goods were inspected and weighed before an authorised officer of the Government and they were delivered to the Government by the assessee ex-docks after clearance and payment of all costs and charges referred to in the contract. The assessee then prepared the final bill for the balance price. The contract provided that if, on arrival in India, the imported sugar was declared by any of the International Superintending Companies to be not conforming to the weight, quality and packing standards prescribed in the contract, the Government would be free to take over the said sugar at a rebate to be fixed by the Government and the assessee should dispose of the said sugar in accordance with the instructions issued by the Government. It was assumed that the bill of lading was endorsed by the assessee in favour of the Government of India. The assessee contended that the sale made by them to the Government took place when the goods were on the high seas and as such it was not liable to sales tax: *Held*, that having regard to the terms of the contract and the circumstances of the case, the contract was for the sale of the goods ex-docks after they had been cleared through the customs barrier and the sale was, therefore, not a sale in the course of import and was not exempt under Article 286(1)(b) of the Constitution. The property in the goods sold only passed from the assessee to the Government after the goods crossed the customs frontier and the sale was therefore liable to be taxed under the Bombay Sales Tax Act, 1953. *J. V. Gokal & Co. (Private)*

Ltd. v. The Assistant Collector of Sales Tax (Inspection) [1960] (11 S.T.C. 186) distinguished. *Shepherd v. Harrison* ([1869] 4 Q.B. 196) and *Sanders Brothers v. Maclean & Co.* ([1883] 11 Q.B.D. 327) referred to.—*MILKHIRAM (INDIA) PRIVATE LTD. v. THE STATE OF BOMBAY* [1963] 14 S.T.C. 18 (Mah.).

—Local purchase of goods after receipt of orders from buyers in other States or outside India —Purchase whether in the course of inter-State trade or in the course of export.—*GANDHI SONS v. SALES TAX OFFICER* [1963] 14 S.T.C. 304 (Ker.) (F.B.).

—Customs frontier—Meaning of.—See *DEPUTY COMMISSIONER OF COMMERCIAL TAXES, MADRAS DIVISION v. DEVAR AND CO. AND OTHERS* [1963] 14 S.T.C. 904 (Mad.).

—*Assessee holding import licence placing orders with foreign exporter and entering into contract of sale with A before landing of goods at Madras port—A clearing goods and paying on behalf of assessee—Bill of entry filed in the name of assessee—Where sale takes place.*—The assessees imported from Penang two consignments of betel-nuts under an import licence. Before the goods were landed at the Madras port, the assessees entered into a contract with A for the sale of the goods. Under the contract A should make all arrangements in connection with the shipment and clearance of the goods and also retirement of the documents from the bank on behalf of the assessees. After the arrival of the ship at the Madras port, the assessees informed the bank that they had sold the goods to A and advised the bank to receive payment from A in respect of the demand draft issued by the exporter. The documents of title were not transferred by the assessees to A by suitable endorsements and the bill of entry was filed with the customs authorities only in the name of the assessees. The assessees contended (1) that as the exporter had affixed A's mark on the packages, there was appropriation of the goods to the contract which the assessees had entered into with A, and that the property in the goods had therefore passed to A even at Penang; (2) that even otherwise the sale took place in the course of import for the reason that A met the demand draft issued against the assessees by the exporter and thereafter made arrangements for the clearance of the goods from the customs: *Held*, (1) that the mere affixing of the mark of A on the packages by the exporter had no significance whatsoever and that the property in the goods did not pass to A at Penang; (2) that as there was no transfer of the documents of title in favour of A and as the bill of entry was filed only in the name of the assessees, the assessees were the owners of the goods till the

goods were cleared from the customs, and it was only the subsequent delivery to A that operated to transfer title to the goods. The sale was therefore not a sale in the course of import.—A. M. K. ABDUL RAHIMAN ROWTHER *v.* THE STATE OF MADRAS [1963] 14 S.T.C. 1014 (Mad.).

—*Import of yarn—Issue of permits to textile mills to import yarn and of letter of authority in favour of assessee—Assessee placing orders with foreign firms, importing goods and despatching them to mills—Whether assessee acts as agent of mills in importing yarn.*—The assessee having their head office at Bombay and a branch at Coimbatore were assessed to sales tax on the footing that they imported staple fibre yarn from various countries into India and thereafter sold the yarn to several mills at Coimbatore. The facts found by the Sales Tax Authorities were as follows:—The assessee placed orders with foreign firms for purchase of staple fibre yarn and then canvassed orders from the mills at Coimbatore for the sale of the goods. The mills obtained under the Import Control Order permits for import of the goods and thereafter entered into contracts with the assessee for the supply of the goods F.O.R. destination at specified prices. At the time of issuing permits to the mills, the Controller of Imports also issued a letter of authority permitting the assessee to import the goods as stated in the licence. The assessee opened the letters of credit and arranged with their bankers for clearance of the goods through the customs barrier after their arrival at the Indian ports and for despatch of the goods to the mills. The bankers delivered the railway receipts to the mills only after payment of 90 per cent. of the price. The balance of 10 per cent. was paid to the assessee after weighment of the goods at the premises of the mills. The assessee contended that they were not themselves the importers of the goods, that they merely acted as agents of the several mills, who alone had the requisite permit under the Control Order to import the goods from abroad and that therefore there was no sale by them to the several mills: *Held*, that the assessee were not the agents of the mills for import of the yarn, that there was a sale of yarn by the assessee to the mills after their import by the assessee and that therefore the assessee were rightly assessed to sales tax. *Johnson v. Kearly* ([1908] 2 K.B. 514) and *J. V. Gokal & Co. (Private) Ltd. v. The Assistant Collector of Sales Tax (Inspection) and Others* [1960] (11 S.T.C. 186) referred to.—ARTHUR IMPORT EXPORT Co. *v.* STATE OF MADRAS [1963] 14 S.T.C. 1022 (Mad.).

—*Import of cotton.*—The assessee-mill obtained from the Government a licence to import foreign

cotton. G to whom a letter of authority was also issued by the appropriate authority, imported that cotton, cleared the goods from the customs, railed the goods and sent the railway receipt through bank. The assessee took delivery of the railway receipt from the bank on payment of 90 per cent. of the value and cleared the goods from railway. The cotton bales were weighed in the presence of G's representative and the final bill adopting the contracted rate was then drawn up. The tenor of the document containing the terms of the contract was consistent only with a transaction of sale of cotton by G to the assessee. The condition attached to the letter of authority however stated that the person in whose favour it had been issued would act purely as an agent of the licensee and the goods imported would be the property of the licensee-holder both at the time of clearance through the customs and subsequent thereto. Treating the transaction as a purchase of cotton from G, the purchase value of cotton was included in the taxable turnover of the assessee under the Madras General Sales Tax Act, 1959. The assessee objected to its inclusion and contended that under the condition of the letter of authority G was only the assessee's agent for the import of cotton and there was therefore no sale by G to it and that in any case the transaction of purchase was in the course of import and was therefore exempt under Article 286(1)(b) of the Constitution: *Held*, (1) that it could not be said that the contract between G and the assessee was not a sale, though it purported to be a sale and was intended to be a sale by the parties, because of the provisions of the Regulation enabling the Government to treat the imported goods as belonging to the licensee for the purpose of its fiscal policy. The transaction was a sale and G was not a mere agent of the assessee for the import of cotton; (2) that the sale to the assessee was effected after the goods were taken out beyond the customs barrier and it was therefore not hit by the constitutional ban under Article 286(1)(b). What constitutes agency is the jural relationship of principal and agent. The rights and liabilities of the parties flow from such relationship. An inference of agency should not however be concluded from the subsistence of a few of such rights or liabilities. The imposition of some legal effects inherent in the relationship of principal and agent by a statute is not the formation of agency by the Legislature but is only the fastening of a liability or clothing of a right in an individual as if the parties concerned occupied the position of agent and principal. The rights and obligations are the legal incidents of the relationship, but the relationship is not the resultant of such rights

and obligations.—*RAJESWARI MILLS LTD. v. THE STATE OF MADRAS* [1964] 15 S.T.C. 1 (Mad.).

—Sale in the course of import—"Occasions the import", meaning of—Contract with Government of India for import and supply of steel to Integral Coach Factory, Madras—Contract providing movement of goods from manufacturers outside India—Whether sale exempt under section 5 or 4—Scope of sections 4 and 5—Appropriation in section 4(2)(b)—Meaning of—Central Sales Tax Act (74 of 1956), Sections 3, 4 and 5.—*BENGAL CORPORATION PRIVATE LTD. v. THE STATE OF MADRAS* [1965] 16 S.T.C. 62 (Mad.).

—Sale in the course of export—Meaning of—Sale of iron ore to Japan through the State Trading Corporation—Whether a sale in the course of export and exempt from sales tax—Constitution of India, Art. 286(1)(b)—Central Sales Tax Act (74 of 1956), Sec. 5.—*NEW RAJASTHAN MINERAL SYNDICATE v. THE STATE OF PUNJAB AND OTHERS* [1965] 16 S.T.C. 534 (Punj.).

—Sale in the course of export—Sale of cotton through commission agents at Bombay to foreign buyer resulting in export of goods—Right to deduction of purchase price under section 5(2)(vi)—*Punjab General Sales Tax Act* (46 of 1948), Secs. 2(ff), 5(2)(vi)—*Constitution of India*, Art. 286(1)(b).—The assessee carrying on the business of purchasing cotton in the State of Punjab, sent the cotton so purchased by rail to Bombay and the railway receipt, taken in favour of "self", to its bankers at Bombay. The assessee's commission agents obtained the railway receipt after depositing with the bank 75 per cent. of the price of cotton by way of security. After taking delivery of the cotton, the commission agents kept it in their godown and when they got an offer of purchase from a foreign buyer, obtained the assessee's consent for its sale and then sold it to the foreign buyer on behalf of the assessee. The commission agents remitted the sale proceeds to the assessee after adjusting the security already given and deducting their commission on the sale. The assessee was charged godown and other incidental charges plus the interest on the amount given as security: *Held*, that the sale of cotton to the foreign buyer by the commission agents on behalf of the assessee was a sale in the course of export within the meaning of Article 286(1)(b) of the Constitution and therefore the assessee was entitled to deduct the purchase price of cotton from the gross turnover under section 5(2)(a)(vi) of the Act. The sale was in the course of export within the meaning of Article 286(1)(b) whether the foreign buyer came

to Punjab and entered into a contract with the assessee or such a buyer contacted the assessee by correspondence or contacted the assessee through its commission agents at Bombay. It would also not make any difference whether the goods, which were actually exported as a result of such a contract for sale were moved from Punjab after the contract had been entered into, or the assessee, in anticipation of contacting a foreign buyer, moved the goods to Bombay.—*JANKI DASS BHAGAT RAM v. THE EXCISE AND TAXATION OFFICER, LUDHIANA, AND ANOTHER* [1965] 16 S.T.C. 542 (Punj.).

—Sale in the course of export—Meaning of—*Question of fact—Nature of jurisdiction of High Court under Article 226—Constitution of India, Articles 226, 286(1)(b)*.—A sale in the course of export within the meaning of Article 286(1)(b) of the Constitution predicates an inextricable connection or bond between the sale and the export, leaving no option to the purchaser from not exporting without committing a breach of the contract. In order to attract the exemption, the sale must itself occasion the export or the export must be made under the sale. To occasion export, there must accordingly exist between the contract of sale and actual exportation a bond so that each link is inseparably connected with the one immediately preceding it. The two activities of the sale and the export must be so integrated as to leave no possibility of a voluntary interruption without entailing a breach of the contract or an obligation arising from the nature of the transaction. There must exist a common intention on the part of the contracting parties to export the goods which must be actually followed by export and this is essential in order to constitute a sale in the course of export. Merely because a sale has been followed by the export of the goods sold does not by itself clothe the sale with the quality of its being in the course of export. Nor is mere intention to export without actual exportation sufficient to constitute a sale in the course of export. It is essentially a question of fact whether or not in a particular case the sale in question is in the course of export. No single test can be laid down which can serve as a straight jacket to fit every transaction. Each case has to be construed on its own peculiar facts and circumstances. Normally, the High Court is not an appellate authority on facts under the Punjab General Sales Tax Act, 1948, and, therefore, challenge to questions of fact before the High Court is not to be encouraged by too readily permitting resort to Article 226 which may have the effect of by-passing the machinery set up by the Legislature in its wisdom for enquiry and scrutiny

into and decisions on questions of fact. Jurisdiction conferred by Article 226 is not intended to supersede the jurisdiction and authority of the assessing hierarchy to deal with the merits of all the contentions that the assessee may raise before them. It would accordingly be inappropriate to permit an assessee to move the High Court under Article 226 and contend that on appraisal of the evidence on the record the conclusion of the assessing authority is wrong. Normally, even questions of law can be brought to the High Court in another jurisdiction under the statutory machinery and that machinery is to be utilised unless there are some special grounds for bypassing it and approaching the High Court under Article 226 which only provides special constitutional remedy in grave cases. However in a clear-cut case of an illegal or unauthorised imposition, apparent on the face of the record, the High Court would not be justified in declining relief, but by and large the assessee must in the first instance be required to proceed in accordance with the statutory machinery provided for relief, and more so when the question raised is one of pure fact to be determined on all the evidence and circumstances of the case.—*MOHAN LAL MOTI LAL v. ASSESSING AUTHORITY, BHATINDA, AND OTHERS* [1965] 16 S.T.C. 553 (Punj.)

—*Sale in the course of import—Assessment—Interference—Extraordinary cases—High Court should not go into determination of facts—Constitution of India, Arts. 226, 286(1)(b)—Rajasthan Sales Tax Act, 1954, Sec. 2(f).*—It is not the function of the High Court under Article 226 of the Constitution of India, in taxing matters, to constitute itself into an original authority or an appellate authority to determine questions of taxability which depend upon a precise determination of facts. In a petition under Article 226 where the prayer is for quashing an assessment order, the High Court is necessarily confined to the facts as stated in the order or appearing on the record of the case. It was not the object of Article 226 to convert the High Courts into original or appellate assessing authorities whenever an assessee chose to attack an assessment order on the ground that a sale was made in the course of import and therefore exempt from tax. The assessee might have to deposit sales tax while filing an appeal but it does not mean that in that case he can by-pass the remedies provided by the Sales Tax Act. There must be something more, something going to the root of the jurisdiction of the Sales Tax Officer, something to show that it would be a case of palpable injustice to the assessee to force him to adopt the remedies provided by the Act. Under the Rajasthan Sales Tax Act and other

Sales Tax Acts, the facts have to be found by the assessing authorities. If any facts are not found by the Sales Tax Officer, they would be found by the appellate authority, and it is not the function of the High Court under Article 226 to find facts. The High Court should not encourage the tendency on the part of the assessee to rush to the High Court after an assessment order is made. It is only in very exceptional cases that the High Court should entertain petitions under Article 226 in respect of taxing matters after an assessment order has been made. It would not be desirable to lay down inflexible rules which should be applied with rigidity in every case, but even so when the question of taxability depends upon a precise determination of facts some of which are in dispute or missing the High Court should decline to decide such questions. As the agent of the State Trading Corporation to look after the import and the sale of cement manufactured in Pakistan, the assessee-firm adopted a *modus operandi* whereby it obtained an agreement from the buyer fixing the price and terms of supply and thereafter it sent instructions to the Pakistan Industrial Development Corporation which in turn forwarded them to the Pakistan cement factory. After consigning the goods the factory advised the buyer in Rajasthan that it had consigned to the State Bank of India, Karachi, the quantity in accordance with the railway receipt and invoice. The State Bank of India then endorsed the railway receipt in favour of the consignee and sent it by post and the latter took delivery in Rajasthan either on presentation of the railway receipt or by executing an indemnity bond. The assessee-firm claimed before the Sales Tax Officer that it was not assessable to sales tax in regard to these transactions on the grounds (i) that it was not a dealer within section 2(f) of the Rajasthan Sales Tax Act, 1954, and (ii) that the sales were in the course of import within the meaning of Article 286(1)(b) of the Constitution of India. The Sales Tax Officer held that the assessee was an agent of a non-resident dealer and was itself therefore a dealer within the meaning of sec. 2(f) of the Rajasthan Sales Tax Act, but he did not discuss the second question raised by the assessee. On a petition under Article 226 of the Constitution of India the High Court held that the assessee was a dealer and proceeded further and held that the sales in question took place when the goods were in the course of import and accordingly quashed the order. On appeal to the Supreme Court: *Held*, (i) that the High Court ought to have declined to entertain the writ petition, as no exceptional circumstances existed

to warrant the exercise of its extraordinary jurisdiction; (ii) that in any case the High Court should not have gone into the second question on the facts of this case. The Sales Tax Officer had not dealt with the question at all and the proper course for the High Court was to quash the order of assessment and send the case back to dispose of it according to law, and not to constitute itself into an original authority or an appellate authority to determine the question relating to the taxability of a particular turnover. Appeal from the decision of the Rajasthan High Court reported as *Shivratn G. Mohatta v. Sales Tax Officer, Jodhpur* [1964] (15 S.T.C. 966).—*SALES TAX OFFICER, JODHPUR, AND ANOTHER v. SHIV RATAN G. MOHATTA* [1965] 16 S.T.C. 599 (S.C.).

—*Sale in the course of export—Purchase for export—Whether exempt under Article 286(1)(b), Constitution of India.*—It is only the sale under which the export is made that is protected by Article 286(1)(b) of the Constitution and a purchase which precedes such a sale does not fall within its purview though it is made for the purpose of, or with a view to, export. Therefore purchases to fulfil antecedent contracts with foreign buyers do not fall under Article 286(1)(b).—*HIND MERCANTILE CORPORATION (P.) LTD. v. COMMISSIONER OF COMMERCIAL TAXES* [1966] 17 S.T.C. 175 (Mys.).

—*Sale in the course of import—Sale whether should precede import—Contract for manufacture abroad and supply in India—Sale in India, whether in the course of import—“Occasions the movement of goods”, meaning of—Supreme Court—Appeal by special leave—Two assessment orders—Two revisions each filed by assessee and department—Common judgment of High Court—Two appeals to Supreme Court—Whether sufficient—Central Sales Tax Act (74 of 1956), Secs. 3(a), 5(2).—K. G. KHOSLA AND CO. (P.) LTD. v. DEPUTY COMMISSIONER OF COMMERCIAL TAXES, MADRAS DIVISION, MADRAS* [1966] 17 S.T.C. 473 (S.C.).

—*Export of coal—Sale in the course of export—Supply and despatch of coal by colliery owner to Pakistan in pursuance of agreement entered into between India and Pakistan—Whether transaction sale—Whether exempt under Article 286(1)(b), Constitution of India, or section 5(2)(a)(v), Bengal Act—Bengal Finance (Sales Tax) Act (6 of 1941), Secs. 2(g), 5(2)(a)(v).*—Pursuant to an agreement between the Governments of India and Pakistan, the former agreed to release large quantities of coal for consumption in East Pakistan. The appellant, as one of the colliery owners in West Bengal, delivered coal to the Fuel Inspector, Eastern Bengal Railway, East Pakistan, and

drew bills in respect of this supply in the name of the Deputy Coal Commissioner (Production), Ministry of Steel and Mines, Government of India, Calcutta. The appellant was charged to sales tax under the Bengal Finance (Sales Tax) Act, 1941, in respect of this supply of coal to Pakistan. The appellant contended (i) that the transaction could not be regarded as a sale liable to sales tax under the Act, and (ii) that it was exempt under section 5(2)(a)(v) of the Act and also under Article 286(1)(b) of the Constitution: *Held*, (i) that the export of coal to East Pakistan was a part of the transaction of sale and could not be separated from it. The sale, even if it was to be the Government of India, could not be dissociated from the export to East Pakistan. Even if the sale took place in West Bengal, and the property in the goods passed to the Government of India within West Bengal, such sale must be regarded as having taken place in the course of export and was therefore exempt under Article 286(1)(b) of the Constitution; (ii) that the transaction also attracted the exemption provided in section 5(2)(a)(v) of the Bengal Finance (Sales Tax) Act, 1941; (iii) that the supply of coal was not made pursuant to a contract between the parties, but was made under the authority and on the conditions specified by the Central Government as contemplated by clause 12E of the Colliery Control Order, 1945. Therefore the transaction could not be regarded as a “sale” as defined in section 2(g) of the Bengal Finance (Sales Tax) Act, 1941, and could not be taxed under the provisions of that Act.—*NORTH ADJAI COAL COMPANY (P.) LTD. v. COMMERCIAL TAX OFFICER AND OTHERS* [1966] 17 S.T.C. 514 (Cal.).

—*Export or import—Export of coal—Special coal shipment programme of Government—Dealers delivering coal under orders of Government to shipping agents and export of such coal outside India—Payment of bills by shipping agents—Whether transaction sale—Whether sale in the course of export—Whether liable to be taxed—Sale of coal to railways—Delivery of coal in wagons—Where sale takes place—Bengal Finance (Sales Tax) Act, 1941, Secs. 2(g), 5(2)(a)(ii), 27—Constitution of India, Article 286(1)(b).*—Where a local or internal sale is made “for the purpose of export” or is an act merely “preparatory to export”, it cannot come under the exemption conferred by Article 286(1)(b) of the Constitution. But it would be exempted if the export or the movement of the goods out of the territory of India (that is, outside the customs barrier of India) takes place as the result of the covenant or contract between the seller and the purchaser, so that the sale and

the resultant export are parts of the same transaction and they cannot be dissociated from each other. It cannot be said that there cannot be any sale in the course of export except where the seller sells the goods directly to the foreign buyer under a direct contract between them. This is a most usual instance of such a transaction as would come under Article 286(1)(b), but this is not the exclusive instance. The mere fact that there is no contract between the seller and the foreign buyer does not conclusively establish that a transaction cannot be one "in the course of export". It may still be held to be such a transaction provided it is established that the contract between the seller and the third party "occasions" the export. The assessee, a coal company, was a registered dealer under the Bengal Finance (Sales Tax) Act, 1941. Under the provisions of the Colliery Control Order, 1945, coal could not be exported out of India without the sanction of the Government of India. The latter placed orders for export through dealers selected by it and such dealers delivered the coal to the shipping agents as directed in the orders. The assessee executed such orders and the coal was in fact exported in pursuance thereof, though the names of the foreign buyers were unknown to the assessee. The assessee submitted bills to the shipping agents and received payment from them for the goods supplied. The shipping agents got their money from the Government. There was no contract of sale between the assessee and the shipping agents and the goods were received by such shipping agents as nominees of the Government. The assessee also supplied coal to the Bengal Nagpur Railway, *inter alia*, in compliance with the directions of the Government, by loading the coal into wagons at the assessee's colliery sheds in Bihar. In the railway receipts, the assessee was named as the consignor and the Bengal Nagpur Railway as the consignee and some place in West Bengal was shown as the destination. The department taxed the assessee under the Bengal Finance (Sales Tax) Act, 1941, taking the view that there was a sale by the assessee to the Government of India within the territory of India and that the sale to the Bengal Nagpur Railway took place within West Bengal. This led to the reference of the following questions of law for the decision of the High Court: "(a) Whether on the facts and in the circumstances of the case the sales in question made under sanction and direction of the Deputy Coal Controller (Distribution) for the purpose of export were assessable under the Bengal Finance (Sales Tax) Act, 1941; (b) Whether on the facts and in the circumstances of the case the sales in question by delivery to the shipping agents can

be said to have taken place in the course of export of the goods out of the territory of India within the meaning of section 27 of the Bengal Finance (Sales Tax) Act, 1941, and Article 286(1)(b) of the Constitution of India and as such exempt from taxes under the Bengal Finance (Sales Tax) Act, 1941; (c) Whether on the facts and in the circumstances of the case the sales in question to the shipping agents who are [within the meaning of the Bengal Finance (Sales Tax) Act, 1941] registered dealers of coke are exempted from taxes under section 5(2)(a)(ii) of the Bengal Finance (Sales Tax) Act; (d) Whether on the facts and in the circumstances of the case the Honourable Member, Board of Revenue, was legally justified in not allowing the stand taken by the petitioner that the sales in question having been made to registered dealers are exempt from taxes on the ground that the stand is a new one; (e) Whether on the facts and in the circumstances of the case the sales in question of goods to the Bengal Nagpur Railway can be said to have taken place in West Bengal within the meaning of Explanation 2 of section 2(g) of the Bengal Finance (Sales Tax) Act and as such liable to be taxed under the said Act." At the hearing of the reference, counsel for the assessee raised the contention that the supply of coal to the shipping agents did not amount to a "sale" as defined under the Bengal Finance (Sales Tax) Act, 1941, and therefore not taxable under the Act; counsel for the respondent opposed it on the ground that it was a new case which was never urged before the authorities below so that there was no finding thereon: *Held*, (1) that the question in issue before the revenue authorities was whether the assessee was entitled to exemption in respect of the supply of coal to the shipping agents. While questions (b) and (e) referred to particular provisions of the Constitution or the Sales Tax Act, question (a) was generic and referred to the Act as a whole. If, therefore, the assessee could show that he was entitled to the exemption by reason of the very definition of "sale" as given in section 2(g) of the Act, there was nothing in question (a) to hold that any reframing of the issue would be necessary to give an answer on that point; (2) that the High Court would be justified in answering question (a) with reference to the new aspect of law raised, namely, whether the transaction was a "sale", provided it would not require the investigation of, and finding on, any facts outside those in the statement of case; (3) that no such investigation of new facts was required and that the facts mentioned in the statement of case were sufficient to come to the conclusion that the

transaction referred to in question (a) was not taxable as a "sale" under the Bengal Finance (Sales Tax) Act, 1941; (4) that the purchase from the assessee—if it was a purchase—was part of an arrangement for exporting the goods outside the territory of India and the contract was completed by the assessee by delivering the goods to shipping agents for being loaded into ships outside the customs barrier. In such a case, the sale by the assessee could not be dissociated from the export. The export took place in pursuance of the contract or arrangement as between the Government and the assessee. Therefore the sale was an "export sale" or a sale which "occasioned" the export or one "in the course of export", and was exempt under Article 286(1)(b) of the Constitution; (5) that the shipping agents were mere nominees of the Government and there was no transaction of "sale" between the assessee and the shipping agents to claim exemption under section 5(2)(a)(ii) of the Bengal Finance (Sales Tax) Act, 1941; (6) that the sale of coal to the Bengal Nagpur Railway took place within West Bengal within the meaning of the Explanation 2 to section 2(g) of the Bengal Finance (Sales Tax) Act, 1941, and as such liable to be taxed under the Act. *New India Sugar Mills Ltd. v. Commissioner of Sales Tax, Bihar* [1963] (14 S.T.C. 316) followed.—S. K. ROY v. ADDITIONAL MEMBER, BOARD OF REVENUE, WEST BENGAL [1966] 18 S.T.C. 379 (Cal.).

—*Purchases of hemp from agriculturists and unregistered dealers—Purchases to satisfy agreement with foreign buyer—Whether purchases were made in the course of export—Liability to purchase tax—Madhya Pradesh General Sales Tax Act, 1958, Secs. 7, 50(1)(iii).*—The assessee-firm was a registered dealer and it purchased hemp from agriculturists and unregistered dealers. The assessee did not resell the hemp in the State of Madhya Pradesh but sent it to Calcutta. The Sales Tax Officer held that the assessee was liable to pay purchase tax on the purchases made by it under section 7 of the Madhya Pradesh General Sales Tax Act, 1958. The assessee contended that it had purchased the hemp in order to satisfy an agreement entered into with an outside purchaser and therefore the purchases were made in the course of export to a foreign buyer and were therefore exempt under section 50(1)(iii) of the Act. The Tribunal found that the necessary link between the two transactions, namely, the agreement of the assessee to supply hemp to the foreign buyer and the purchases actually made by the assessee, was not established: *Held*, that the purchases made by the assessee at best could be

said to be made for the purposes of export, but they did not occasion the export and they were therefore not exempt under section 50(1)(iii) but were liable to purchase tax under section 7. The High Court can answer the question referred to it only on the basis of the facts found by the Tribunal. If the assessee thought that the finding of the Tribunal was not based on any evidence or on misapprehension of evidence, the assessee should have asked the Tribunal to refer to the High Court the question as to whether there was any material on record to justify the finding reached by the Tribunal. *Ben Gorm Nilgiri Plantations Co. v. Sales Tax Officer* [1964] (15 S.T.C. 753) referred to.—KANHIRAM RAMGOPAL v. COMMISSIONER OF SALES TAX, MADHYA PRADESH [1967] 19 S.T.C. 408 (M.P.).

—*Sale in the course of import by transfer of documents—Mode of proof—Production of documents—Whether necessary—Sale by bank of goods pledged to them—Whether sale on behalf of pledger—Liability to sales tax.*—Sales in the course of import by transfer of documents of title may be effected by handing over the documents. An endorsement to that effect on the documents is only one mode of proof, but not necessarily the only way of proving the fact. Actually, an endorsement is not a legal requisite for a valid transfer of documents, which can take place by delivery of the documents themselves. Therefore where there is other evidence to show that the sales were in the course of import and should have been effected by transfer of documents of title, production of the documents would not be essential.—THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES, MADURAI DIVISION, MADURAI v. A. R. S. THIRUMENINATHA NADAR FIRM, TUTICORIN [1968] 21 S.T.C. 184 (Mad.).

—*Sale in the course of export—Sale to Nepal dealers who take delivery of goods in India—Whether sale exempt under Article 286(1)(b), Constitution of India.*—The assessee carrying on the business of selling brasswares and scrap in the State of Uttar Pradesh, had sold the goods to a dealer belonging to the State of Nepal and delivery was given at Nepalganj within India. It was found that the Nepal dealer was free to take the goods inside Nepal State or to sell them in Nepalganj. The assessee claimed that the sales were sales in the course of export and were therefore exempt from sales tax under Article 286(1)(b) of the Constitution: *Held*, that in view of the fact that the Nepal dealer was free to sell the goods in Nepalganj or to take them to Nepal, there was no direct connection between the sale and the export, and the activity of sale and that of the export were not so integrated that the connection

between the two could not be voluntarily interrupted. In the absence of it being proved or stated that the intention of the seller as also of the buyer was to export the goods to Nepal and until the possibility of the goods being sold at Nepalganj in India had been excluded it was impossible to say that the sales had occasioned the export. Therefore the sales were not exempt under Article 286(1)(b) of the Constitution.—*DAMODAR DASS VISHWANATH v. COMMISSIONER, SALES TAX, U.P., LUCKNOW* [1968] 22 S.T.C. 60 (All.).

—Sale in the course of export—Sales to Nepal dealers who take delivery of goods in India—Whether sales exempt under Article 286(1)(b), Constitution—Central Sales Tax Act (74 of 1956), Sec. 5(1).—*SHANKERJEE RAUT GOPALJI RAUT v. STATE OF BIHAR* [1968] 22 S.T.C. 241 (Pat.) (F.B.).

—See also *NATIONAL CARBON Co. v. COMMISSIONER OF SALES TAX, U.P.* [1969] (23 S.T.C. 388), *RAM NARAIN HAR CHARAN LAL v. COMMISSIONER OF SALES TAX, U.P.* [1969] (23 S.T.C. 401) and *GOBIND SUGAR MILLS v. THE JUDGE, SALES TAX (REVISIONS)* [1969] (23 S.T.C. 404).

—*Sufficiency of evidence—Presumption—Contracts with exporting agents consistently of one pattern—Failure to produce two contracts—Tribunal drawing presumption and disallowing claim—Legality.*—The assessee claimed that a turnover of Rs. 1,06,000 was entitled to exemption on the ground that they represented sales in the course of export effected through B as exporting agent. The Deputy Commercial Tax Officer found on a perusal of the contracts available with the assessee that their claim to the sales being in the course of export was supportable in regard to a turnover of Rs. 67,000. But since the two contracts which represented a turnover of Rs. 39,000 were not forthcoming, he held that they should be presumed to be sales completed in Madras State and therefore assessable. The Sales Tax Appellate Tribunal on appeal confirmed this decision: *Held*, that what the Tribunal purported to do was to draw a presumption in the absence of certain items of evidence, but while purporting to draw such a presumption, the Tribunal entirely failed to consider rule 26(16) of the Madras General Sales Tax Rules, 1959, regarding the period for preservation of accounts and the fact that the assessee's transactions with B had been consistently of one pattern with reference to the assessee's accounts and a major portion of the transactions. There was no basis at all for drawing an adverse inference from the circumstance of the non-availability of the contracts

and the assessee was therefore entitled to the exemption. *Noor Mohamed & Co. v. State of Madras* [1956] (7 S.T.C. 792) and *The State of Madras v. Noor Mohammed & Co.* [1960] (11 S.T.C. 570) referred to.—*S. MOHAMMAD SAMIULLA SAHIB & Co. v. THE STATE OF MADRAS* [1964] 15 S.T.C. 920 (Mad.).

ARTICLE 286 (1) (a), (2) AND EXPLANATION

[The decisions of the Supreme Court are first digested here in their chronological order.]

Sale outside State—Inter-State trade and commerce—Article 286 (1), (2) and Explanation.—The Explanation to Article 286(1) of the Constitution provides by means of a legal fiction that the State in which the goods sold or purchased are actually delivered for consumption therein is the State in which the sale or purchase is to be considered to have taken place notwithstanding the fact that the property in such goods passed in another State. Under the Explanation if the goods are actually delivered in the taxing State, as a direct result of a sale or purchase, for the purpose of consumption therein, then such sale or purchase shall be deemed to have taken place *in* that State and *outside* all other States. The latter States are prohibited from taxing such sales or purchases; the former alone is left free to do so, which power it derives not by virtue of the Explanation but under Article 246(3) read with entry 54 of List II. The *non obstante* clause was inserted in the Explanation simply with a view to make it clear beyond all possible doubt that it was immaterial where the property in the goods passed, as it might otherwise be regarded as indicative of the place of sale. It cannot be understood as implying that, under the general law relating to the sale of goods, the passing of the property in the goods is the determining factor in *locating* a sale or purchase. The expression “for the purpose of consumption in that State” must be understood as having reference not merely to the individual importer or purchaser but as contemplating distribution eventually to consumers in general within the State. Thus all buyers within the State of delivery from out-of-State sellers, except those buying for re-export out of the State, would be within the scope of the Explanation and liable to be taxed by the State on their inter-State transactions. The Explanation deals only with inter-State sales or purchases and not with purely local or domestic transactions which are subject to the taxing power of the State. The sale by a trader in one State to a user in another State would be a sale “in the course of inter-State trade” according to the natural meaning of those words and there is no reason for importing the restriction that the transaction should be one

between two traders only. The operation of clause (2) of Art. 286 stands excluded as a result of the legal fiction enacted in the Explanation, and the State in which the goods are actually delivered for consumption can impose tax on inter-State sales or purchases. The effect of the Explanation in regard to inter-State dealings is to invest what, in truth, is an inter-State transaction with an intra-State character in relation to the State of delivery and clause (2) can, therefore, have no application to such sales or purchases. While Article 304(a) deals with the restrictions as to imposition of tax on goods, Article 286 deals with the restrictions as to imposition of tax on sales or purchases of goods. But this distinction loses its practical importance in the case of sales tax imposed by the delivery State under the conditions mentioned in the Explanation, for, such a tax is, in economic quality, practically indistinguishable from a tax on the consumption or use of the goods. If a non-discriminatory use or consumption tax imposed under Article 304 on goods imported from other States does not infringe the freedom of inter-State commerce declared by Article 301, parity of reason and policy requires that a tax on sales or purchases imposed by the State in which the goods are actually delivered for consumption in the State should not be regarded as violative of the ban under Article 286(2). *Per* BOSE, J.—Under Article 286 the basic idea is to prohibit taxation in the case of inter-State trade or commerce unless and until the ban under clause (2) is lifted and always in the case of exports and imports; and when the ban is lifted, the Explanation is there to settle a matter of considerable controversy regarding the *situs* of a sale. The Explanation is limited to cases of sales which in truth and in fact take place in the *course* of inter-State trade and commerce and so long as the ban under clause (2) exists the Explanation will not come into play. The object of the Explanation is to fix the *locus* of a sale or purchase by means of a fiction. The *non-obstante* clause does not enunciate the general law on the point. By virtue of the Explanation the State where the goods are actually delivered for the purposes of consumption therein has alone the right to impose the tax. The word “consumption”, in its economic sense, means the use which a purchaser chooses to make of the goods purchased for his own purposes. Therefore a dealer who purchases from another dealer outside the State is a “consumer” and can be taxed *if the ban is lifted* even if he purchases for re-export outside the State. But when he re-exports, his sale to the outside consumer cannot be taxed if the Explanation is attracted. The words “actually delivered” and “as a direct result” of the sale or

purchase “for the purpose of consumption in the State” have been used to signify that the carrier to whom goods are entrusted by the seller of a State for delivery to the purchaser of another State must be regarded as the agent of the *seller* and not of the *purchaser*. The inter-State character of the course ends when the goods reach the first consumer in the taxing State and when he in turn sells to the ultimate consumer in that State, a different course begins, namely the course of intra-State trade. *Per* BOSE and BHAGWATI, JJ.—Articles 286 and 304 deal with different things and Article 286 should be construed without reference to Article 304. *Per* BHAGWATI, J.—Whereas before the Constitution the taxing power could be exercised by reason of a sufficient territorial connection involving either one or more of the ingredients of a sale in the shape of agreement to sell, the payment of price, transfer of ownership, delivery of goods etc., the completion of a transaction of sale or purchase by the transfer of ownership, or the passing of the property in the goods was enacted to be the sole criterion for taxability in Article 286. Delivery of goods for the purpose of consumption in the delivery State means the delivery for the purpose of using by the consumer and it has no application to the case of a dealer purchasing the goods across the border for dealing with or disposing of the same in the ordinary course of trade. The general provision which is enacted in Article 286 (2) against the imposition of tax on the sale or purchase of goods in the course of inter-State trade or commerce should give way to the special provision which is enacted in the Explanation to Article 286(1)(a) enabling the delivery State to tax such sale or purchase in the limited class of cases covered by the Explanation. Where a transaction is between a dealer in one State in which the property in the goods passes and a consumer in another State where the goods are actually delivered for the purpose of consumption therein the delivery State would be entitled to tax the transaction. The State in which the property in the goods passes would not be able to tax such sale or purchase in the absence of a provision enacted by law by Parliament within the meaning of Article 286(2). Once that ban is lifted by the appropriate legislation enacted by the Parliament the State in which the property in the goods passes would also be entitled to tax such sale or purchase but not otherwise. Decision of the Bombay High Court in [1953] 4 S.T.C. 10) reversed.—THE STATE OF BOMBAY AND ANOTHER *v.* THE UNITED MOTORS (INDIA) LTD. AND OTHERS [1953] 4 S.T.C. 133 (S.C.). [This decision was reversed by the Supreme Court in *BENGAL IMMUNITY COMPANY LIMITED v. THE STATE OF*

BIHAR AND OTHERS [1955] 6 S.T.C. 446 (S.C.). See below.]

Sale outside State—Inter-State trade.—Where the respondents who were dealers of certain goods in the State of Travancore-Cochin purchased goods from the neighbouring districts of the State of Madras and their own paid servants took deliveries of the goods outside the State of Travancore-Cochin: *Held*, that the transactions would be exempt under Article 286(1)(a). If the purchases were made in the neighbouring districts of Madras and deliveries were effected through ordinary commercial channels by employing commission agents who made the purchases and arranged for the deliveries at the respondents' depots inside the State of Travancore-Cochin, the transactions would partake of an inter-State character and fall under Article 286(2).—**STATE OF TRAVANCORE-COCHIN AND OTHERS v. SHANMUGHA VILAS CASHEW-NUT FACTORY AND OTHERS** [1953] 4 S.T.C. 205 (S.C.).

—The Explanation to clause (1)(a) of Article 286 only explains what is an outside sale or purchase, for by saying that a particular sale or purchase is to be deemed to take place in a particular State it only indicates that it is to be deemed to take place outside all other States so as to attract the ban of clause (1)(a) and thereby take away the taxing power of those other States with respect to such sale or purchase. The Explanation does not operate as an exception or a proviso but only explains sub-clause (a). Its purpose is not to confer any taxing power on any State, and it cannot be resorted to for any such extraneous or collateral purpose. It does not convert an inter-State sale or purchase into an intra-State sale for any purpose other than the limited purpose of sub-clause (a). The *non-obstante* clause in the Explanation clearly implies that the framers of the Constitution adopted the view that a sale or purchase has a *situs* and that it ordinarily takes place where the property in the goods passes. If therefore a sale or purchase takes place outside a State, either under the general law or by virtue of the fiction created by the Explanation, then that State cannot, under clause (1)(a), tax such sale or purchase. If a sale or purchase takes place within a State, either under the general law or by reason of the Explanation, then, if such a sale or purchase takes place "in the course of" inter-State trade and commerce, no State, not even the State where the sale or purchase takes place as aforesaid can tax it by reason of clause (2), unless and until Parliament by law provides otherwise. A sale or purchase "in the course of" import or export within the meaning of clause (1)(b) includes

(i) a sale or purchase which itself occasions the import or export, (ii) a sale or purchase which takes place while the goods are on the high seas on their import or export journey, and (iii) the last purchase by the exporter with a view to export and the first sale by the importer to a dealer after the arrival of the imported goods. If a sale or purchase takes place within a State, either under the general law or by reason of the Explanation, then, if it takes place in the course of import or export as explained above, no State, not even the State within which such sale or purchase takes place can tax it by reason of clause (1)(b).—*Per* DAS, J., in his dissenting judgment in **THE STATE OF TRAVANCORE-COCHIN AND OTHERS v. THE SHANMUGHA VILAS CASHEW-NUT FACTORY AND OTHERS** [1953] 4 S.T.C. 205 (S.C.).

Sale outside State—Inter-State trade and commerce—Scope of Article 286.—*Held*, by DAS, ACTG. C.J., BOSE, BHAGWATI and JAFER IMAM, JJ. (JAGANNADHADAS, VENKATARAMA AYYAR and SINHA, JJ., dissenting)—Whichever view is taken of the Explanation to Article 286(1)(a) of the Constitution it should be limited to the purpose the Constitution-makers had in view when they incorporated it in clause (1). The Explanation, which creates a legal fiction, is to be limited to the purpose for which it was created and should not be extended beyond that legitimate field. The avowed purpose of the Explanation is to explain what an outside sale referred to in sub-clause (a) is and it does not confer or enlarge the legislative power of the States. The Explanation cannot be legitimately extended to clause (2) either as an exception or as a proviso thereto or read as curtailing or limiting the ambit of clause (2). The dominant, if not the sole, purpose of Article 286 is to place restrictions on the legislative powers of the States, subject to certain conditions in some cases and with that end in view Article 286 imposes several bans on the taxing power of the States in relation to sales or purchases viewed from different angles and according to their different aspects. In some cases the ban is absolute [clause (1)(a) read with the Explanation and clause (1)(b)] and in some cases it is conditional [clause (2)]. Again, in some cases the bans may overlap but, nevertheless, they are distinct and independent of each other. The operative provisions of the several parts of Article 286, namely, clause (1)(a), clause (1)(b), clause (2) and clause (3), are intended to deal with different topics and one cannot be projected or read into another. Therefore, except in so far as Parliament may by law provide otherwise, no State law can impose or

authorise the imposition of any tax on sales or purchases when such sales or purchases take place in the course of inter-State trade or commerce and irrespective of whether such sales or purchases do or do not fall within the Explanation to Article 286(1)(a). [The Court did not decide what is exactly meant by the phrase "inter-State trade or commerce" or by the phrase "in the course of".] The appellant-company carrying on the business of manufacturing and selling certain goods had its registered office and factory in West Bengal. It had neither any agent or manager in Bihar nor any office or godown in that State. The appellant despatched goods from Calcutta by rail, steamer or air against orders accepted by it in West Bengal. The Bihar Sales Tax Authorities were of the view that the sales made by the appellant in West Bengal in which goods had been delivered in Bihar as a direct result of the sale for the purposes of consumption in that State were liable to Bihar sales tax. The assessing officer of Bihar therefore issued a notice to the appellant calling upon it to get itself registered as a dealer under the Bihar Sales Tax Act, to submit the return and to deposit the tax due in a treasury in Bihar and further stated that, in default of compliance, he would proceed to make a best judgment assessment. The appellant repudiated its liability to pay the tax and filed a petition under Article 226 of the Constitution. The High Court held that the petition was not maintainable inasmuch as the officer was acting within his jurisdiction in issuing the notice and the appellant had an adequate alternative remedy under the Bihar Sales Tax Act. On appeal to the Supreme Court, the main questions that arose for consideration were: (1) whether the petition was maintainable, (2) whether the Supreme Court had the power to re-examine the majority view in *The State of Bombay v. United Motors (India) Ltd.* [1953] (4 S.T.C. 133) under which the sales made by the appellant were liable to Bihar sales tax under Article 286(1)(a), read with the Explanation, of the Constitution, and (3) whether the sales were not liable to be taxed by virtue of Article 286(2): *Held*, (1) *per curiam*, that the High Court was not right in holding that the petition under Article 226 was misconceived or was not maintainable; (2) that the Supreme Court has, in a proper case, the power to reconsider its own decisions; (3) *per DAS, ACTG. C.J., BOSE, BHAGWATI and JAFER IMAM, JJ.* (*JAGANNADHADAS, VENKATARAMA AYYAR and SINHA, JJ., dissenting*), that the decision of the Supreme Court in *The United Motors* case [1953] (4 S.T.C. 133) was a recent one where judicial opinion was divided, that the decision was not quite clear and it had encouraged

the imposition of tax burdens on the consuming public on an interpretation of the Constitution which was erroneous, that it had given rise to a considerable inconvenience and hardship to business people and it was difficult to rectify the error by the legislative process and that, therefore, in the public interests, the meaning, scope and effect of Article 286 should be re-examined afresh; (4) that, until Parliament by law made in exercise of the powers vested in it by clause (2) of Article 286 provided otherwise, no State could impose or authorise the imposition of any tax on sales or purchases of goods when such sales or purchases took place in the course of inter-State trade or commerce and the majority decision in *The State of Bombay v. United Motors (India) Ltd.* [1953] (4 S.T.C. 133) in so far as it decided to the contrary could not be accepted as well-founded on principle or authority. *Per DAS, ACTG. C.J., BOSE and JAFER IMAM, JJ.*—The charging section of the Bihar Sales Tax Act read with the relevant definitions in that Act cannot operate to tax inter-State sales or purchases. As Parliament has not otherwise provided, the Act, in so far as it purports to tax sales or purchases that take place in the course of inter-State trade or commerce, is unconstitutional, illegal and void. The Act, however, is not *ultra vires* and void in its entirety but is only bad in so far as it seeks to impose sales tax contrary to the provisions of Article 286. *Per JAGANNADHADAS, VENKATARAMA AYYAR and SINHA, JJ.*—Sufficient grounds have not been made out for overruling the decision in *The State of Bombay v. The United Motors (India) Ltd.* [1953] (4 S.T.C. 133). Sales falling within the Explanation are, by reason of the fiction enacted therein, intra-State sales and they fall outside the ambit of Article 286(2) and are unaffected by the prohibition contained therein. The delivery State has the present power to tax the fictional sale which falls within the scope of the Explanation. [BHAGWATI, J., said that the views taken by him in *The State of Bombay v. The United Motors (India) Ltd.* [1953] (4 S.T.C. 133) that (i) both the title State and the delivery State would be entitled to impose the tax on the sale or purchase falling within the Explanation, and (ii) the Explanation was an exception or proviso to Article 286(2) were erroneous.] *The State of Bombay and Another v. The United Motors (India) Ltd. and Others* ([1953] S.C.R. 1069; 4 S.T.C. 133) overruled. *The Bengal Immunity Co., Ltd. v. The State of Bihar and Others* [1953] (4 S.T.C. 43) reversed.—THE BENGAL IMMUNITY COMPANY LIMITED v. THE STATE OF BIHAR AND OTHERS [1955] 6 S.T.C. 446 (S.C.).

Scope of Explanation to Article 286(1)(a).—As we have already stated, we do not desire, on this

occasion, to express any opinion on the validity claimed for or the infirmities imputed to any of these several views, for, in our opinion, it is not necessary to do so for disposing of this appeal. Whichever view is taken of the Explanation it should be limited to the purpose the Constitution-makers had in view when they incorporated it in clause (1). It is quite obvious that it created a legal fiction. Legal fictions are created only for some definite purpose. Here the avowed purpose of the Explanation is to explain what an outside sale referred to in sub-clause (a) is. The judicial decisions referred to in the dissenting judgment in *The State of Travancore-Cochin v. Shanmugha Vilas Cashew-Nut Factory* [1954] (5 S.C.R. 53 at pp. 81 and 82; 4 S.T.C. 205) and the case of *East End Dwellings Co. Ltd. v. Finsbury Borough Council* ([1952] A.C. 109 at p. 132) clearly indicate that a legal fiction is to be limited to the purpose for which it was created and should not be extended beyond that legitimate field. It should further be remembered that the dominant, if not the sole, purpose of Article 286 is to place restrictions on the legislative powers of the States, subject to certain conditions in some cases and with that end in view Article 286 imposes several bans on the taxing power of the States in relation to sales or purchases viewed from different angles and according to their different aspects. In some cases the ban is absolute as, for example, with regard to outside sales covered by clause (1)(a) read with the Explanation, or with regard to imports and exports covered by clause (1)(b) and in some cases it is conditional, e.g., in the cases of inter-State sales or purchases under clause (2) which is, in terms, made subject to the proviso thereto and also to the power of Parliament to lift the ban. Again, in some cases the bans may overlap but nevertheless, they are distinct and independent of each other. The operative provisions of the several parts of Article 286, namely, clause (1)(a), clause (1)(b), clause (2) and clause (3) are manifestly intended to deal with different topics and, therefore, one cannot be projected or read into another. On a careful and anxious consideration of the matter in the light of the fresh arguments advanced and discussions held on the present occasion we are definitely of the opinion that the Explanation in clause (1)(a) cannot be legitimately extended to clause (2) either as an exception or as a proviso thereto or read as curtailing or limiting the ambit of clause (2). Indeed, in *The State of Bombay v. The United Motors (India) Ltd.* [1953] (4 S.C.R. 1069; 4 S.T.C. 133) at pp. 1083-84 and again at p. 1086 the majority judgment also accepted the position that the Explanation was not an exception or proviso either to clause (1)(a) or to clause (2). If,

therefore, the Explanation cannot be read into clause (2) because of the express language of the Explanation and also because of the difference in the subject-matter of the operative provisions of the two clauses, then it must follow that, except in so far as Parliament may by law provide otherwise, no State law can impose or authorise the imposition of any tax on sales or purchases when such sales or purchases take place in the course of inter-State trade or commerce and irrespective of whether such sales or purchases do or do not fall within the Explanation. It is not necessary, for the purposes of this appeal, to enter upon a discussion as to what is exactly meant by inter-State trade or commerce or by the phrase "in the course of", for it is common ground that the sales or purchases made by the appellant-company which are sought to be taxed by the State of Bihar actually took place in the course of inter-State trade or commerce. Parliament not having by law otherwise provided, no State law can, therefore, tax these sales or purchases, that is to say, Bihar cannot tax by reason of clause (2) although they fall within the Explanation and other States cannot tax by reason of both clause (1)(a) read with the Explanation and clause (2).—DAS, C.J., in the majority judgment in *THE BENGAL IMMUNITY CO., LTD. v. THE STATE OF BIHAR AND OTHERS* [1955] 6 S.T.C. 446 (S.C.).

—Reading side by side the law on the subject both in America and under the Indian Constitution, it is difficult to avoid the conclusion that the Explanation to Article 286(1)(a) and Article 286(2) have been inspired by the American law on the subject, and that their spheres of operation correspond respectively to the jurisdiction of the State and of the Congress in America as delineated in the decisions of the Supreme Court of America. With reference to sales for local consumption made in the course of inter-State trade, the law under the Constitution is exactly what it is in America.—*Per VENKATARAMA AYYAR, J.*, in his dissenting judgment in *THE BENGAL IMMUNITY COMPANY LIMITED v. THE STATE OF BIHAR AND OTHERS* [1955] 6 S.T.C. 446 (S.C.).

—*Actual delivery—Meaning of.*—The expression "actual delivery" in the Explanation to Article 286(1)(a) means delivery of the goods to the purchaser or his agent, and delivery to the common carrier is not actual delivery.—*Per VENKATARAMA AYYAR, J.*, in his dissenting judgment in *THE BENGAL IMMUNITY COMPANY LIMITED v. THE STATE OF BIHAR AND OTHERS* [1955] 6 S.T.C. 446 (S.C.).

Sales in the course of inter-State trade—Article 286(2).—Merely because a person has registered

himself as a dealer under the C.P. and Berar Sales Tax Act, 1947, it cannot be said that whatever transactions he entered into with other dealers in the State of Madhya Pradesh were all intra-State transactions or internal sales or purchases irrespective of the fact that the transactions involved movement of the goods across the border and were clearly transactions of sale of goods in the course of inter-State trade or commerce. All the transactions entered into by a registered dealer do not necessarily import a liability to pay tax under the Act because, whenever a question arises in regard to his liability to pay any tax under the Act, such liability would have to be determined in spite of his being a registered dealer with reference, *inter alia*, to the provisions of section 27A which incorporates within its terms the bans which have been imposed on the powers of the State Legislatures to tax under Article 286(1)(a) and (2) of the Constitution. The assessee was a firm carrying on in Madhya Pradesh the business of making and selling bidis. In the course of their business the assessee imported finished tobacco from dealers in Bombay State, rolled the tobacco into bidis and exported the bidis to various other States. The dealers in those States who bought bidis from the assessee sold the same to various other dealers and consumers in those States. The assessee and the parties who exported the finished tobacco from the Bombay State were registered as dealers under the C.P. and Berar Sales Tax Act, 1947. The assessee also made declarations in the form required by rule 26(2) at the time of making purchases of the finished tobacco that they had purchased the goods for use as raw material in the manufacture of goods for sale by actual delivery in Madhya Pradesh for the purpose of consumption in that State. The Sales Tax Authorities held that by exporting bidis to other States and thus utilising it for a purpose different from that made in the declaration the assessee had made themselves liable under section 4(6) to pay tax on the purchases made by them out of Madhya Pradesh and delivered to them in Madhya Pradesh: *Held*, that the assessee imported the finished tobacco into Madhya Pradesh from persons who were carrying on in the State of Bombay the business of processing tobacco and selling the goods and there was of necessity, as a result of these transactions, movement of goods from the State of Bombay to the State of Madhya Pradesh and the transactions were, therefore, in the course of inter-State trade and commerce and were not liable to be taxed by virtue of Article 286(2): *Held further*, that the fact that both parties to the transaction were registered as dealers under the Act or that the assessee had

made a declaration under rule 26(2) did not affect the exemption of the transactions from sales tax. The activities of selling or supplying goods in Madhya Pradesh if carried on habitually would amount to carrying on of the business of selling or supplying goods in the State of Madhya Pradesh and even an outside merchant who indulged in such activities may in such event be said to be carrying on business in Madhya Pradesh and would come within the definition of "dealer" given in section 2(c).—MOHANLAL HARGOVIND DAS *v.* STATE OF MADHYA PRADESH [1955] 6 S.T.C. 687 (S.C.).

Sale outside State—Inter-State trade and commerce—President's Sales Tax Continuance Order, 1950.—*Per* DAS, ACTG. C.J., BHAGWATI, JAFER IMAM and CHANDRASEKHARA AIYAR, JJ.; JAGANNADHADAS, J., *dissenting*.—The several bans imposed by the several clauses of Article 286 of the Constitution of India on the taxing powers of the States are independent and separate and each one of them has to be got over before a State Legislature can impose tax on transactions of sale or purchase of goods. These bans have been imposed from different view-points, and, even though the transactions of sale or purchase may in conceivable cases overlap so far as these different view-points are concerned, each of those bans is operative and has to be enforced. So far as Article 286(1)(a) is concerned, the Explanation determines by the legal fiction created therein the *situs* of the sale in the case of transactions coming within that category and when a transaction is thus determined to be inside a particular State it necessarily becomes a transaction outside all other States. The Sales Tax Continuance Order, 1950, issued by the President under the proviso to Article 286(2) only lifted the ban in so far as the transactions took place in the course of inter-State trade or commerce and could not be projected into the sphere of any other clause of Article 286. It had not the effect of lifting the ban which was imposed by Article 286(1)(a) and the Explanation thereto, even though the transactions covered by the Explanation by and large fell within the category of transactions which took place in the course of inter-State trade or commerce. The moment it was determined that the transactions were outside the State by virtue of the Explanation to Article 286(1)(a) the ban imposed by that Article attached to the same and could not be lifted by the President's Order which saved only those inter-State transactions which did not come within the Explanation. Therefore after the coming into force of the Constitution and during the period the Sales Tax Continuance Order, 1950, was in force, in respect of an inter-State sale the State in which the goods were

actually delivered as a direct result of such sale for the purpose of consumption therein was alone entitled to tax the transaction. The exporting State in such a case became an outside State and was not entitled to tax it. [It was held on the facts that certain sales were not intra-State sales *qua* the State of Madhya Pradesh but were sales effected in the State of Uttar Pradesh and falling under Explanation to Article 286(1)(a) and were therefore not taxable by the State of Madhya Pradesh.] When an assessment consists of a single undivided sum in respect of the totality of the property treated as assessable, the wrongful inclusion in it of certain items of property which by virtue of a provision of law were expressly exempted from taxation renders the assessment invalid in toto. An assessment relating to the pre-Constitution as well as the post-Constitution periods was one composite whole. The Court found that the assessment relating to the post-Constitution period was invalid by virtue of Article 286(1)(a) and the Explanation thereto: *Held*, that the assessment was invalid in toto and should be set aside. [The case was, however, remitted to the assessing officer for reassessment in accordance with law.] *Per* JAGANNADHAS, J.—The pre-Constitutional sales tax laws, if then lawful, are not hit by Article 286(1)(a)—at least to the extent that the ban under Article 286(1)(a) overlaps with that under Article 286(2). *Bengal Immunity Co., Ltd. v. The State of Bihar and Others* [1955] (6 S.T.C. 446) followed.—*RAM NARAIN SONS LTD. v. ASSISTANT COMMISSIONER OF SALES TAX AND OTHERS* [1955] 6 S.T.C. 627 (S.C.).

Sale outside State—“Consumption” in Explanation to Article 286(1)(a)—Meaning of.—In the absence of any words to limit the connotation of the word “consumption” in the Explanation to Article 286(1)(a) of the Constitution to the final act of consumption, it will be proper to say that the word has been used to connote any kind of user which is ordinarily spoken of as consumption of the particular commodity. Therefore whenever a commodity is so dealt with as to change it into another commercial commodity there is consumption of the first commodity within the meaning of the Explanation to Article 286(1)(a). The petitioner-firm carrying on the business of manufacture of bidis with its head office in the State of Madhya Pradesh was assessed to purchase tax on certain purchases of tobacco made by it in the State of Bombay. The tobacco was delivered to the petitioner’s branch within the State of Bombay, which made the purchases, but before it was despatched to the State of Madhya Pradesh for being manufactured into bidis, it was

subjected to a process leading to its conversion into bidi patti, a different commercial article from tobacco. It was contended that the assessment of the petitioner to purchase tax was illegal inasmuch as the transactions were purchases outside the State of Bombay within the meaning of Article 286(1)(a) of the Constitution read with the Explanation: *Held*, that when tobacco was delivered in the State of Bombay for purpose of changing it into a commercially different article, *viz.*, bidi patti, the delivery was for the purpose of consumption and therefore the purchases fell within the Explanation to Article 286(1)(a) and must be said to have taken place inside the State of Bombay.—*ANWARKHAN MEHBOOB CO. v. THE STATE OF BOMBAY (NOW MAHARASHTRA) AND OTHERS* [1960] 11 S.T.C. 698 (S.C.).

Sale outside State—Aviation spirit supplied at aerodrome to aircraft bound for foreign countries—Whether taxable—Whether entitled to exemption under Article 286(1)(a), Constitution of India—Scope of Explanation to Article 286(1)(a).—See *BURMAH-SHELL OIL STORAGE AND DISTRIBUTING CO. OF INDIA LTD. AND ANOTHER v. COMMERCIAL TAX OFFICER AND OTHERS* [1960] 11 S.T.C. 764 (S.C.).

Inter-State sales—Company having office in Madras State—Sale of coal for consumption of steamers in Travancore-Cochin State and going abroad.—The concept of export in Article 286(1)(b) of the Constitution postulates the existence of two termini as those between which the goods are intended to move or between which they are intended to be transported, and not a mere movement of goods out of the country without any intention of their being landed in specie in some foreign port. Goods might be consumed within the meaning of the Explanation to Article 286(1)(a) either by destruction or by way of use depending on the nature of the goods. The respondent-company were dealers in coal and they had their offices at Fort Cochin which was formerly within the State of Madras. The respondent imported and kept stocks of “bunker coal” stocked at Candle Island which, at the relevant period, was also within the State of Madras. Part of the activities of the respondent consisted in the supply of “bunker coal” from their depots in Candle Island for steamers arriving at the port of Cochin in the State of Travancore-Cochin for the outward voyage of the steamers from the Cochin port. In respect of these sales of coal, tax was claimed by the Travancore-Cochin State for the years 1951-52 and 1952-53 but the respondent claimed exemption under Article 286(1)(b) or (2) of the Constitution of India and also under a notification dated 5th February, 1954, and

published in the official Gazette of 16th February, 1954. Under the notification the Government expressed their intention to levy sales tax on non-resident dealers selling goods for delivery and consumption in Travancore-Cochin State only from the 1st April, 1953, and to forego the levy of tax on such transactions prior to that date: *Held*, (1) that the sales of coal by the respondent were sales in the course of inter-State trade and fell within the ban of Article 286(2), but the levy of tax on such sales had been validated by the Sales Tax Laws Validation Act, 1956; (2) that the sales were not sales "in the course of export" within Article 286(1)(b) and were therefore not exempt under that article, but they fell within the Explanation to Article 286(1)(a) inasmuch as the coal was delivered in the State of Travancore-Cochin and the steamers were the actual consumers who were at liberty to consume the coal wherever they desired; (3) that the notification dated 5th February, 1954, was and must be deemed to be one issued in exercise of the power conferred on the State Government by section 6(1) of the Travancore-Cochin General Sales Tax Act, 1125, and as the transactions clearly fell within the notification, the respondent would be entitled to the benefit of the tax exemption conferred by the notification. *Cochin Coal Company Limited v. State of Travancore-Cochin and Others* [1956] (7 S.T.C. 731) affirmed on different grounds. *M. P. V. Sundararamier & Co. v. State of Andhra Pradesh and Another* ([1958] S.C.R. 1422; 9 S.T.C. 298) and *Burmah-Shell Oil Storage and Distributing Co. of India Ltd. v. Commercial Tax Officer and Others* [1960] (11 S.T.C. 764) followed. *State of Bombay v. United Motors (India) Ltd.* [1953] (4 S.T.C. 133; [1953] S.C.R. 1069) and *Bengal Immunity Co., Ltd. v. State of Bihar* [1955] (6 S.T.C. 446; [1955] 2 S.C.R. 603) referred to.—*THE STATE OF KERALA AND OTHERS v. THE COCHIN COAL COMPANY LTD.* [1961] 12 S.T.C. 1 (S.C.).

Explanation sales—Claim for exemption—Whether assessee should prove that goods were actually consumed in State of first destination—Sales in which goods were delivered outside State but not for consumption in State of delivery—Whether outside all States in India—State in which property in goods passes—Whether alone can tax—Right to tax sale relying on real territorial nexus.—Per *curiam*.—If goods were as a direct result of a sale delivered outside the State of Bihar for the purpose of consumption in the State of first delivery, an assessee would be entitled to the exemption from Bihar sales tax by virtue of the Explanation to Article 286(1)(a) of the Constitution and it would not be necessary for the assessee to prove further that the goods so delivered were actually consumed in the State of

first destination. Per *HIDAYATULLAH, DAS GUPTA* and *RAJAGOPALA AYYANGAR, JJ.*—Sales which satisfied the terms of the Explanation to Article 286(1)(a) were by a fiction deemed to be "inside" the State of delivery-cum-consumption and therefore "outside" all other States. In such cases only the State "inside" which the sale was deemed to take place by virtue of the Explanation was exempt from the ban imposed by Article 286(1)(a). All other States would be subject to that ban in respect of such sales. In cases where goods were delivered as a result of a sale outside a State, but not for the purpose of consumption in the State of first destination, the terms of the Explanation were not satisfied and consequently the sale was not inside the State of delivery and not "inside" any State in India within the Explanation, but it could not be said that such sale was "outside" every State in India within Article 286(1)(a). The situs of "non-Explanation" sales must be determined independently of the terms of the Explanation. Such sales would be exempt from tax only if the sales took place "outside" the State but not otherwise. In the case of a "non-Explanation" sale, the opening words of Article 286(1) and the *non-obstante* clause in the Explanation indicate that it was the passing of the property within the State that was intended to be fastened on, for the purpose of determining, whether the sale was "inside" or "outside" the State, and therefore, subject to the operation of the "Explanation", that State in which the property in the goods passed would be the *only* State which would have the power to levy a tax on the sale. The power of the State to impose tax on such a sale might still not be available unless the transaction was unaffected by the other bans imposed under sub-clauses (1)(b), (2) and (3) of Article 286. Per *DAS and SHAH, JJ.*—By enacting that a tax shall not be imposed under the Bihar Sales Tax Act, 1947, when the sale takes place outside the State of Bihar in section 33(1)(a)(i) only the power to tax "Explanation sales" which do not take place within the State of Bihar is taken away, but not the power to tax "non-Explanation sales" in which though under the general law of sale of goods the property passes outside the State, there exists between the taxing power of the State and the sale a nexus as contemplated by the definition of sale in section 2(g). If the sale is one in which the goods have been delivered outside the State of Bihar, but not as a direct result of the sale or not for the purpose of consumption in the State of first delivery, the sale will not be covered by the Explanation, and the right to tax the sale, if arising otherwise under the Act relying upon the territorial nexus, will not be impaired by the

prohibition imposed by clause (1)(a)(i) of section 33. The right of the State of Bihar to tax a sale relying upon a real territorial nexus not being impaired by section 33 of the Act, all sales as defined by section 2(g) of the Bihar Sales Tax Act are liable to be taxed, except those falling within section 33(1)(a)(ii), section 33(2) and "Explanation sales" outside the State of Bihar. Order of the High Court in *India Copper Corporation Ltd. v. The State of Bihar and Others* [1958] (9 S.T.C. 204) modified.—INDIA COPPER CORPORATION LTD. v. THE STATE OF BIHAR AND OTHERS [1961] 12 S.T.C. 56 (S.C.).

Explanation and non-Explanation sales—*Whether assessee entitled to exemption in regard to "non-Explanation sales".*—The appellants claimed exemption from tax liability under Article 286(1)(a) of the Constitution of India in respect of all sales effected by them as a direct result of which goods were delivered outside the State of Bihar (1) for consumption in the State of first delivery, and (2) for consumption not in the State of first delivery but in other States. The Sales Tax Authorities following the decision of the Board of Revenue in the *Bengal Timber* case (Case No. 61 of 1952) held that all the sales were liable to tax under the Bihar Sales Tax Act, 1947. The appellants filed an application for revision before the Board of Revenue, and the Board passed the following order:—"As regards the admitted despatches of goods outside the State after the 26th January, 1950, when the Constitution came into force, the learned lower court has been guided by the decision of the Board in the *Bengal Timber* case (Case No. 61 of 1952). But this ruling of the Board stands superseded by the subsequent decision of the Supreme Court in the *United Motors* case. According to the decision of the Supreme Court, no tax can be levied on despatches to the places outside the State after the 26th January, 1950, and on this point the petitions are allowed, and the Sales Tax Officer directed to recalculate the amount of tax payable by the assessee." The appellants claimed that the Board had, by its order, given an exemption from tax with regard to all sales outside Bihar. The respondents however took the view that the Board had given relief only with regard to the first category of transactions and not with regard to the second category. The Board also rejected an application by the respondents for a review of its order. When the respondents continued their refusal to refund the tax on the second category of transactions, the appellants filed in the High Court of Patna petitions under Article 226 of the Constitution of India. The High Court held that the order of the Board was ambiguous, that the

transactions in the second category were not exempt from tax liability, and that the appellants, in a writ of *mandamus*, could not insist on a manifestly wrong order being enforced. The appellants appealed to the Supreme Court on a certificate granted by the High Court under Article 132 of the Constitution of India: *Held*, (1) that the Board did not, by its order, intend to decide the point regarding the tax liability of the second category of transactions in favour of the appellants, but left it to the officer to decide for himself the relief to which the appellants were entitled on that officer's interpretation of the judgment in the *United Motors* case; (2) that the judgment in the *United Motors* case only dealt with the Explanation sales and did not deal with sales which did not satisfy the requirements of the Explanation; (3) that the first category of transactions would be exempt from the levy of sales tax under the Bihar Sales Tax Act, 1947, by reason of their being "inside" sales within the State of delivery-cum-consumption and therefore "outside" sales quoad the State of Bihar; (4) that in regard to the second category of transactions, on the orders of the Board the previous decision of the Board in *Bengal Timber* case held the field and as the orders of the Board had become final as between the parties, the levy of the tax was valid. Decision of the Patna High Court in *Tobacco Manufacturers (India) Ltd. v. Commissioner of Sales Tax, Bihar, and Another* [1956] (7 S.T.C. 745) affirmed. *Bhopal Sugar Industries v. Commissioner of Income-tax* [1960] (40 I.T.R. 618) distinguished. *State of Bombay v. United Motors (India) Ltd. and Others* ([1953] S.C.R. 1069; 4 S.T.C. 133) referred to.—TOBACCO MANUFACTURERS (INDIA) LTD. v. COMMISSIONER OF SALES TAX, BIHAR, AND ANOTHER [1961] 12 S.T.C. 87 (S.C.).

Purchase inside State for resale outside State—*Whether exempt.*—In order that a sale or purchase might be said to take place in the course of inter-State trade within the meaning of Article 286(2) of the Constitution, as it stood prior to the sixth amendment, it is essential that there must be transport of goods from one State to another under the contract of sale or purchase. A purchase made inside a State for sale outside the State cannot itself be said to be in the course of inter-State trade and the imposition of a tax thereon is not repugnant to Article 286(2). Certain sales to the petitioner were not included in the taxable turnover of the sellers by reason of the registration certificate which the petitioner had obtained on a declaration that the goods were to be resold in Orissa. In violation of this declaration the petitioner sold the goods to

dealers outside the State and he was taxed under section 5(2)(a)(ii) of the Orissa Sales Tax Act, 1947. The petitioner contended that these purchases were made in the course of inter-State trade and that the imposition of sales tax thereon was, in consequence, *ultra vires*: *Held*, that the imposition of tax was not on the sales by the petitioner to persons outside the State, but on the purchases by him inside the State. The former sales were in the course of inter-State trade, and were not taxable under Article 286(2), but the latter were purely intra-State sales and a tax imposed thereon did not offend Article 286(2). *Messrs Mohanlal Hargovind Das v. The State of Madhya Pradesh* [1955] (6 S.T.C. 687; [1955] 2 S.C.R. 509), *State of Travancore-Cochin v. Shanmugha Vilas Cashew-nut Factory* [1953] (4 S.T.C. 205; [1954] S.C.R. 53) and *Bengal Immunity Company Limited v. The State of Bihar* ([1953] 2 S.C.R. 603; 6 S.T.C. 446) referred to.—*ENDUPURI NARASIMHAM AND SON v. THE STATE OF ORISSA AND OTHERS* [1961] 12 S.T.C. 282 (S.C.).

Purchases inside State for resale outside State—Whether exempt.—Only sales which affect inter-State trade or commerce directly and are an integral part thereof are saved under Article 286(2) of the Constitution. A tax on a purchase inside the State of goods which are inside the State for the purpose of being sold to dealers outside the State does not offend Article 286(2). Both Article 286 of the Constitution and sub-section (1A) of section 3 of the Assam Sales Tax Act, 1947, save from taxation all sales in the course of inter-State trade or commerce and there is no need to look further into the Act to see whether they are exempted once again or not. What section 15 of the Assam Sales Tax Act, 1947, does is to grant an additional exemption in respect of sales in which the goods, though sold to a registered dealer, are meant for resale in the State itself. It is an error to think that because the machinery section (section 15) does not repeat the exemption given by the charging section (section 3) the turnover of a dealer would necessarily include the sales in the course of inter-State trade or commerce. Consequently section 15 of the Act and rule 80 of the Rules do not offend Article 286(2) of the Constitution and are not *ultra vires*. *Endupuri Narasimham & Son v. State of Orissa and Others* [1961] (12 S.T.C. 282) followed. *Ramesh Chandra Dey v. The State of Assam and Others* [1957] (8 S.T.C. 384) reversed.—*THE STATE OF ASSAM v. RAMESH CHANDRA DEY & OTHERS* [1961] 12 S.T.C. 441 (S.C.).

Explanation and non-Explanation sales—Right of State in which property in goods passes to tax the

sales.—Where the Explanation to Article 286(1)(a) of the Constitution of India is inapplicable, it is the “passing of the property within the State” that is intended to be fastened on for the purpose of determining where a sale is “inside” or “outside” the State. Therefore subject to the operation of the “Explanation”, that State in which the property in the goods passes would be the *only* State which would have the power to levy a tax on the sale. Under the Sale of Goods Act, 1930, in an auction sale of specific goods the title in the goods passes and the sale is complete as soon as the hammer falls. Teas were stored in the godowns at Willingdon Island in the Travancore-Cochin State and samples of the teas were taken to Fort Cochin in the State of Madras. There by the samples the teas were sold by public auction in lots. Some were purchased in their entirety and others in parts. After consideration money was paid at Fort Cochin, delivery orders were given to the buyers addressed to the godown keepers at Willingdon Island and actual delivery was taken there. The teas were then sent out from Willingdon Island for consumption either in other parts of India or were exported out of India. On the question whether the sales of teas “in full lots” were liable to sales tax under the Travancore-Cochin General Sales Tax Act, 1125: *Held*, (1) that the property in the goods passed at Fort Cochin but the fiction created by the Explanation to Article 286(1)(a) was inapplicable because there was no delivery as a direct result of sale for the purpose of consumption in any particular State; (2) that therefore both the categories of sales (teas taken to other parts of India and those exported out of India) were not inside the State of Travancore-Cochin but were outside that State and were not liable to be taxed under the Travancore-Cochin General Sales Tax Act, 1125. *India Copper Corporation Ltd. v. State of Bihar* ([1961] 2 S.C.R. 276; 12 S.T.C. 56) followed.—*A. V. THOMAS & CO., LTD. v. DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX, TRIVANDRUM* [1963] 14 S.T.C. 363 (S.C.).

Explanation sales—Power of States to tax non-Explanation sales—Actual delivery—Whether means physical or notional delivery.—By Article 286(1) of the Constitution as it stood before it was amended by the Constitution (Sixth Amendment) Act, 1956, sales as a direct result of which goods were delivered in a State for consumption in such State were fictionally to be regarded as inside that State for the purpose of clause (1)(a) and so within the taxing power of the State in which such delivery took place and they being outside all other States were exempt from sales tax by

those other States. But the Explanation to Article 286(1)(a) is not exhaustive of what may be called "inside sales". It does not localise the *situs* of all sales. The power of the State under entry 54 of List II of the Seventh Schedule to tax sales [not falling within clauses (1)(b), (2) and (3)] which are outside the Explanation, and which may be called "non-Explanation" sales, remains unimpaired. To attract the Explanation to Article 286(1)(a), the goods have to be actually delivered as a direct result of the sale for the purpose of consumption in the State in which they are delivered. But the expression "actually delivered" in the context in which it occurs can only mean physical delivery of the goods, or such action as puts the goods in the possession of the purchaser; it does not contemplate mere symbolical or notional delivery, *e.g.*, by entrusting the goods to a common carrier, or even delivery of documents of title like railway receipts. The rule contained in section 39(1) of the Indian Sale of Goods Act, 1930, raises a *prima facie* inference that the goods have been delivered if the conditions prescribed thereby are satisfied; it has no application in dealing with a constitutional provision which while imposing a restriction upon the legislative power of the States entrusts exclusive power to levy sales tax to the State in which the goods have been actually delivered for the purpose of consumption. The appellant was engaged in the manufacture of jute goods and had its factory in the State of Andhra. For securing regular supply of jute bags for its factories for the packing of cement the Associated Cement Company Ltd. entered into a contract with the appellant. As and when the jute bags were needed for packing of cement, the company issued despatch instructions calling upon the appellant to send jute bags by railway to the factories outside the State of Andhra. Pursuant to those instructions the appellant loaded the goods in the railway wagons, obtained the railway receipts in the name of the company as consignee, and, against payment of price, delivered the railway receipts to the agent of the company within the State of Andhra. The High Court held that as the railway receipts were delivered to the agent of the buyer within the State, and price was also realized from the agent within the State, the goods must be deemed to have been delivered to the buyer within the State, and the appellant was liable to pay sales tax to the State on the price of the goods sold. On appeal to the Supreme Court: *Held*, that as the goods were sent under railway receipts to places outside the State of Andhra and actually delivered for the purpose of consumption in those States, the State of Andhra had no authority to

levy tax in respect of those sale transactions. Decision of the High Court of Andhra Pradesh in Tax Revision Case No. 27 of 1958 dated 7th April, 1960, reversed.—*SHREE BAJARANG JUTE MILLS LTD., GUNTUR v. THE STATE OF ANDHRA PRADESH* [1964] 15 S.T.C. 430 (S.C.).

Non-Explanation sales—*State in which property in goods passes—Whether alone can tax.*—*Held*, by the majority (GAJENDRAGADKAR, C.J., WANCHOO, RAJAGOPALA AYYANGAR and SIKRI, J.J.; SHAH, J., dissenting) that though clause (a) to Explanation 2 to section 2(j) of the Travancore-Cochin General Sales Tax Act, 1125, enacted that "notwithstanding anything contrary in the Sale of Goods Act, the sale or purchase of goods shall be deemed to take place in the State if the goods were actually in the State at the time the contract for sale or purchase of goods thereof was made" still by the non-obstante provision contained in section 26 a tax on the sale or purchase of goods could not be imposed where such sale or purchase took place "outside" the State of Travancore-Cochin. Even if section 26 were ignored, still by the terms of Article 286(1)(a) the position would be the same and the State could not validly levy a tax on a sale which was outside that State. Where the Explanation to Article 286(1)(a) of the Constitution of India is inapplicable, it is the "passing of property within the State" that is intended to be fastened on for the purpose of determining whether a sale is "inside" or "outside" the State. Therefore subject to the operation of the "Explanation", that State in which the property in the goods passes would be the only State which would have the power to levy a tax on the sale. The facts in this case were the same as those in *A. V. Thomas & Co. Ltd. v. Deputy Commissioner of Agricultural Income-tax and Sales Tax, Trivandrum* [1963] (14 S.T.C. 363) and following that decision their Lordships held that as the property in the goods sold by public auction passed in Fort Cochin in the State of Madras, the sale was an "outside" sale *quoad* Travancore-Cochin and it was therefore not taxable by the State of Travancore-Cochin by reason of the prohibition contained in Article 286(1)(a). SHAH, J.—The doctrine of territorial nexus had full play in sales tax legislation under the Government of India Act, 1935; it also applies subject to certain modifications since the amendment of the Constitution by the Constitution (Sixth Amendment) Act, 1956. By the enactment of Article 286 of the Constitution it has not been abrogated in the interregnum between the promulgation of the Constitution and the amendment of Article 286 by the Constitution (Sixth Amendment) Act, 1956. *India Copper Corporation Ltd. v. The State of Bihar and Others* [1961] (12 S.T.C. 56)

and *A. V. Thomas & Co. Ltd. v. Deputy Commissioner of Agricultural Income-tax and Sales Tax, Trivandrum* [1963] (14 S.T.C. 363) followed.—*MALAYALAM PLANTATIONS LTD., QUILON v. THE DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX, SOUTH ZONE, QUILON* [1964] 15 S.T.C. 665 (S.C.).

Inter-State sales—Sales outside State—Coal supplied to consumers outside taxing State pursuant to directions of Coal Commissioner under Colliery Control Order, 1945—Sales whether inter-State—Whether outside the State.—During the financial years 1954-55, 1955-56 and 1956-57, the appellant colliery supplied coal to allottees outside the taxing State (Hyderabad and after reorganisation Andhra Pradesh) pursuant to directions of the Coal Commissioner issued under the Colliery Control Order, 1945. Under that Order, the supply, use and disposal of coal were strictly regulated from the stage of production to that of consumption. The procedure for the supply was as follows: The Coal Commissioner authorised the appellant to despatch to specified consumers, coal not exceeding the quantities mentioned. The consumer then requested the appellant to despatch by rail the quantity of coal allotted and gave instructions as to booking, the name of the consignee and the collection of the price. The appellant loaded the coal in railway wagons making out a "sale note" mentioning the cost per ton F.O.R. colliery, with freight to pay. So far as the appellant was concerned, property in the coal consigned passed to the allottee when the goods were loaded into the railway wagons for conveyance and thereafter all losses and any new taxes had to be borne by the consignee. The appellant claimed that it was not liable to be taxed under the Hyderabad General Sales Tax Act, 1950, on the coal supplied by it to allottees outside the taxing State on the ground (a) as regards the period April 1, 1954, to September 6, 1955, that the sales fell within the Explanation to Article 286(1)(a) of the Constitution; (b) as regards the period September 7, 1955, to September 10, 1956, that the sales were either Explanation sales or inter-State sales; (c) as regards the period September 11, 1956, to January 4, 1957, that they were inter-State sales and not taxable by the State; and (d) as regards the period January 5, 1957, to March 31, 1957, that they were inter-State sales and chargeable under the Central Sales Tax Act, 1956, alone: *Held*, (i) that as coal supplied pursuant to directions of the Coal Commissioner issued under the Colliery Control Order, 1945, was meant for consumption by the allottee, and where the allottee was outside the State it was supplied for the purpose of consumption in the State in which the allottee

resided or carried on business, the sales in the first two periods were not liable to tax by virtue of the Explanation to Article 286(1)(a); *Shree Bajarang Jute Mills v. State of Andhra Pradesh* [1964] (15 S.T.C. 430) (S.C.) applied; (ii) that the sales in the second period were also inter-State sales and the State had, during that period, no power to levy sales tax on such sales; (iii) that the State had no power to tax the sales during the third and fourth periods as they were inter-State sales: coal was transported from the colliery of the appellant to the consumers outside the taxing State as a result of a covenant or incident of the contract of sale. Decision of the Andhra Pradesh High Court in *Singareni Collieries Co. Ltd. v. State of Andhra Pradesh* [1961] (12 S.T.C. 765) and *Singareni Collieries Co. Ltd. v. Commissioner of Commercial Taxes* [1961] (12 S.T.C. 838) reversed. [Their Lordships did not consider the question of the scope of the revisional jurisdiction of the Commissioner under section 15 of the Hyderabad General Sales Tax Act, 1950, raised in *Singareni Collieries Co. Ltd., Hyderabad v. Commissioner of Commercial Taxes, Hyderabad* [1961] (12 S.T.C. 838). As the appellant never raised at any stage before the taxing authorities or even before the High Court the question whether the transactions were sales under the general law of sales of goods, their Lordships also assumed that the transactions were sales.]—*SINGARENI COLLIERIES CO., LTD. v. COMMISSIONER OF COMMERCIAL TAXES AND OTHERS* [1966] 17 S.T.C. 197 (S.C.).

Inter-State trade—Purchases to carry out obligations to constituents outside State—Whether exempt under Article 286(2), Constitution of India.—A registered dealer who makes purchases to carry out his obligations to constituents outside the State does not make such purchases in the course of inter-State trade and commerce because those purchases are at a stage when the course of inter-State trade does not really commence. Such a sale can be taxed under the Orissa Sales Tax Act, 1947, and the imposition of tax is not repugnant to Article 286(2) of the Constitution. The appellant-company, a registered dealer holding a certificate of registration issued under the Orissa Sales Tax Act, 1947, carried on the business of supplying sleepers to the railways. The appellant purchased inside the State sleepers and timber tax-free by reason of its certificate that they were for resale in the State of Orissa, but instead of selling the sleepers inside the State, the appellant exported them. The Sales Tax Officer thereupon included the price of the goods in the taxable turnover of the appellant under the proviso to section 5(2)(a)(ii) of the Orissa Sales Tax Act, 1947. The appellant contended

that the words "in Orissa" were added by the Legislature in the operative part of section 5(2)(a)(ii) after the quarter involved in the case and, therefore, the export of the sleepers outside the State did not affect the appellant as prior to the amendment exemption was available if the goods were for resale irrespective of the place of sale: *Held*, that the tax was always leviable on the first sale and it would have been so levied but for the certificate which was furnished by the appellant when making purchases from the local dealers. The certificate was that the sleepers and timber were for resale in Orissa and when that condition was not fulfilled, the tax became payable even under section 5(2)(a)(ii) before the amendments. *Endupuri Narasimham and Son v. The State of Orissa and Others* [1961] (12 S.T.C. 282) and *Modi Spinning and Weaving Mills Co. Ltd. v. Commissioner of Sales Tax, Punjab, and Another* [1965] (16 S.T.C. 310) followed.—*HIMATSingKA TIMBER Co. LTD. v. THE STATE OF ORISSA* [1966] 18 S.T.C. 235 (S.C.).

Sale outside State—Actual delivery for purpose of consumption—*Supply of wooden sleepers to railways—Goods booked by rail at railway station within State after passing—Consignee outside State—Right of re-inspection at destination reserved under contract—Place of actual delivery.*—During the period July 1, 1950, to June 30, 1953, the appellant supplied for the railways wooden sleepers by rail to consignees outside the State of Madhya Pradesh, pursuant to a contract. The prices stipulated in the contract covered everything required to be done by the appellant under the contract including all loading and handling charges. The appellant, at its expense, had to arrange with the railway, for the lease of plots of land at the railway station (in this case, Dhamtari in Madhya Pradesh) where the sleepers had to be offered for examination and passing. Pending despatch, passed sleepers were to remain in the appellant's custody. Rejected sleepers were to be removed from the railway premises at its expense. The Sleeper Control Officer was to give the appellant a passing certificate of the sleepers passed, and then the appellant had to despatch the sleepers in accordance with the officer's orders. The requisite number of sleepers was then loaded into railway wagons, after obtaining from the Station Master a tally receipt for the number loaded, and booked by rail to the consignee to whom the sleepers were allotted. At the destination the consignee had to check and report on any shortage or defective sleepers. The consignee had the right to re-inspect the sleepers at the destination and rejected sleepers were deemed to be non-delivered. The contract further provided that all sleepers were to be at

the risk of the appellant until fully delivered and finally accepted at the destination. The appellant was entitled to payment only for such sleepers as were approved, branded and passed and duly delivered to the consignee. It was responsible for the total shortage in the consignment and was not entitled to any payment for such shortage, including rejected sleepers. The question was whether the State of Madhya Pradesh could levy sales tax on sleepers supplied by the appellant to the consignees who were outside the State of Madhya Pradesh: *Held*, on the facts, that though the major part of the operations of the appellant with regard to delivery were to be performed at Dhamtari, the appellant was not relieved of all liability as to delivery until the goods were finally accepted at the destination by the consignee. Under the contract, the consignee had the right to inspect the goods at the destination and reject any which were not in terms of the contract. The actual physical delivery was not taken as complete before the goods were accepted by the consignee at the destination. Therefore consumption took place in the State to which the goods were despatched with the result that the sales came within the purview of the Explanation to Article 286(1)(a) of the Constitution, as it stood before the Sixth Amendment, and they could not be subjected to sales tax by the State of Madhya Pradesh. The question was not when the title to the goods passed under the contract but whether actual delivery of the goods took place outside the State of Madhya Pradesh for the purpose of consumption there, so as to be within the deeming provision of the Explanation to Article 286(1)(a). The contract had to be considered in the setting of the facts and circumstances of the case as a whole. The place of actual delivery in the light of all the circumstances could only be the destination of the goods and the goods could only be said to be fully delivered and finally accepted after they were acknowledged at the destination. Even if there was no rejection at the place of destination, actual delivery would not be completed until they were finally accepted at the destination. In order to find out whether the Explanation to Article 286(1)(a) was applicable, the Court need not consider where the property passed, nor was it to guide itself by section 39(1) of the Sale of Goods Act, which only raised a *prima facie* inference as to delivery. *Birendranath Guha & Co. v. State of Bihar* [1954] (5 S.T.C. 273) and *D. N. Dutta v. Commissioner of Sales Tax, Orissa* [1961] (I.L.R. 1961 Cuttack 622) disapproved.—*BENGAL TIMBER TRADING Co. LTD. v. COMMISSIONER OF SALES TAX, MADHYA PRADESH, INDORE* [1967] 19 S.T.C. 366 (S.C.).

Explanation to Article 286(1)(a).—During the calendar year 1952, the appellant supplied timber by rail from the Mandla Fort railway station (in Madhya Pradesh) to places outside the State under a contract with the Director-General of Stores, Supplies and Disposals, Government of India. Under the undisputed course of business between the appellant and the Director, timber logs were kept by the appellant ready and available for inspection at that railway station. After inspection the inspecting authority issued a certificate and also put a hammer mark on the timber approved. The timber was then despatched by goods train in full wagon loads on military credit notes to the specified consignees. As soon as the goods were booked the appellant had to inform the consignee about the despatch of the timber giving the number of the wagon and the number of the railway receipt. The appellant was also required to place in each wagon an invoice or packing note showing the number of planks by sizes and their cubic capacity. The appellant sent the railway receipts to the consignee by registered post. The consignee was entitled at the destination to re-inspect the goods, check the shortage, if any, and reject the timber not conforming to specifications. The appellant was paid 90 per cent. of the price of each consignment on proof of despatch and the balance was to be paid on receipt of the consignment in good condition. The Sales Tax Authorities assessed the appellant to tax on those sales. The appellant thereupon applied to the High Court under Article 226 of the Constitution of India for a writ to quash the assessments. There was nothing to show that the actual delivery took place outside the State of Madhya Pradesh and it was not the appellant's case before the High Court that any place other than the Mandla Fort railway station was intended as the place of delivery. The High Court held that the cumulative effect of all the terms of the contract was that the goods were actually delivered at Mandla Fort, and dismissed the petition. On appeal to the Supreme Court: *Held*, on the facts, that as there was no evidence to show that actual delivery of the goods took place at the destination, the *prima facie* inference as to delivery at Mandla Fort under section 39(1) of the Sale of Goods Act was not displaced, and the High Court could not have come to the conclusion that the goods were actually delivered outside the State for the purposes of Article 286(1)(a) of the Constitution read with the Explanation. Decision of the Madhya Pradesh High Court in *C. P. Timber Works v. Commissioner of Sales Tax, M. P., Indore, and Others* [1964] (15 S.T.C. 602) affirmed. *Bengal Timber Trading Co. Ltd. v.*

Commissioner of Sales Tax, Madhya Pradesh, Indore [1967] (19 S.T.C. 366) referred to.—*C. P. Timber Works v. Commissioner of Sales Tax, Madhya Pradesh, and Others* [1967] 20 S.T.C. 335 (S.C.).

Scope of Sales Tax Continuance Order, 1950.—The bans imposed by the several clauses of Article 286 of the Constitution of India are independent and separate and therefore if a transaction of sale was outside the State by virtue of the Explanation to Article 286(1)(a), the ban imposed by that Article attached to the same and it could not be lifted by the President's Sales Tax Continuance Order, 1950, which saved only those inter-State transactions which did not come within the Explanation. Where goods sold were delivered for consumption outside the State of Orissa, such sales could not be taxed by the State of Orissa under Article 286(1)(a) read with the Explanation as also under section 30(1)(a)(i) of the Orissa Sales Tax Act, 1947.—*SALES TAX OFFICER, CUTTACK, AND ANOTHER v. B. C. PATEL AND CO.* [1958] 9 S.T.C. 467 (S.C.).

—*Held*, following the decision in *Sales Tax Officer, Cuttack, and Another v. B. C. Patel & Co.* [1958] 9 S.T.C. 467; [1959] S.C.R. 520, that the assessee was rightly assessed to sales tax for all the quarters prior to and ending on 31st December, 1949, and that the assessee was not liable to be taxed for the post-Constitution quarters, because the goods were delivered outside Orissa for consumption in the delivery State.—*THE STATE OF ORISSA AND ANOTHER v. KARAMSHI WAGHJI CHAUDA* [1961] 12 S.T.C. 236 (S.C.).

Sales Tax Continuance Order, 1950—Sales falling under Explanation to Article 286(1)(a)—Liability to tax under Bihar Sales Tax Act during period 26th January, 1950, to 30th September, 1951.—Between 26th January, 1950, and 30th September, 1951, the appellant, having its place of business in Calcutta, sold machinery to various parties in the State of Bihar. The price payable for the goods was F.O.R. Calcutta and the property in them passed to the purchasers as soon as the appellant put the goods on the railway at Calcutta. It was found that the actual delivery of the goods was given to the purchasers in Bihar for consumption there. In respect of these sales the appellant was assessed to tax under the Bihar Sales Tax Act, 1947. The High Court held that the assessment was covered by the Sales Tax Continuance Order, 1950, and was therefore valid. On appeal to the Supreme Court: *Held*, (1) that a tax which could be legitimately levied under the Sales Tax Continuance Order, 1950, must be a tax which was being

lawfully levied by a State Government immediately before 26th January, 1950; (2) that section 33 of the Bihar Sales Tax Act, 1947, did in fact impose a tax on the class of sales covered by the Explanation to Article 286(1)(a) and the imposition was conditional on the ban mentioned in Article 286(2) being lifted by law of Parliament as provided therein; but as section 33 only came into force from 26th January, 1950, it could not be a law levying a tax on any sales immediately before the commencement of the Constitution within the meaning of the Sales Tax Continuance Order, 1950; (3) that these sales were not taxed by the Bihar Sales Tax Act, 1947, before the Constitution came into force and the Government of Bihar were also not taxing them before 26th January, 1950, under any other provision; therefore the High Court was in error in holding that the assessment was covered by the Sales Tax Continuance Order, 1950. Decision of the Patna High Court in *William Jacks and Company Limited v. The State of Bihar* [1960] (11 S.T.C. 242) reversed.—*WILLIAM JACKS AND CO., LTD. v. THE STATE OF BIHAR* [1963] 14 S.T.C. 375 (S.C.).

Validity, scope and effect of Sales Tax Laws Validation Act, 1956.—While in the context of Article 286(1)(a), the Explanation thereto can be construed as purely negative in character though positive in form, it cannot be so construed in its setting in section 22 of the Madras General Sales Tax Act, 1939, as adapted to the Andhra State, where it must have a positive content. As the Explanation lays down in clear and unambiguous terms that the sales of the character mentioned therein are to be deemed to have taken place inside the State in which goods are delivered for consumption, full effect must be given to it, and its operation cannot be cut down by reference to the *non obstante* clause. The several sections forming part of a statute should be read, unless there are compelling reasons contra, as constituting a single scheme and construed in such manner as would give effect to all of them. On this principle, section 2(h) and section 22 must be read together as defining what are sales which are taxable under the Act and what are not, and so read, the Explanation really means that in sales in which goods are delivered for consumption in the State of Madras, the property therein shall be deemed to have passed inside that State, notwithstanding that it has, under the Sale of Goods Act, passed outside that State. On this construction, those sales will fall within the definition in section 2(h) and will be taxable. Article 286(1)(a) and the Explanation thereto form, in their setting in a taxing statute, integral parts of and different

facets of the same concept. Sales in which property passes outside the State of Madras but delivery for consumption is inside Madras are at once inside sales for Madras and outside sales for the other States. If in exercise of the power of the President to adapt under Article 372(2), the enactment of the Explanation is requisite to give effect to one aspect of that concept, that is, for prohibiting the State of Madras from taxing sales when goods are delivered outside, it can also operate to give effect to the other aspect on the concept which is so integrally connected with it, *viz.*, taxing of sales in which goods are delivered for consumption in the State of Madras, if its language is comprehensive and wide enough to include such sales. The power which the President has under Article 372(2) to adapt is the legislative power of the State whose law is adapted, and that includes the power to repeal and amend any provision. If the law as adapted is within the legislative competence of the State and its enactment is in the process of bringing the State law into conformity with Article 286, it is within the ambit of the power conferred by Article 372(2). The effect of the concluding words of Article 372(2) is to render the question of the validity of the adaptation non-justiciable. Accordingly the Adaptation Order of the President is not open to attack on the ground that it goes beyond the limits contemplated by Article 372(2). As the language of the Explanation is general and of sufficient amplitude not merely to restrict but also to add to the power of the State to tax Explanation sales, and as the reasons for construing it as purely restrictive in Article 286(1)(a) are without force in their application to a taxing statute, full effect must be given to the words of the enactment so as to operate to confer on the State a power to tax Explanation sales. Section 22 operated to impose a tax falling within the Explanation, subject to authorisation by Parliament as provided in Article 286(2). The policy behind the Sales Tax Laws Validation Act, 1956, is to declare the law as interpreted in *The United Motors* case as the law governing sales falling within the Explanation up to the date of the judgment in *The Bengal Immunity Company* case and to give effect to the law as laid down in that decision for the sales effected subsequent thereto. The true nature of a law has to be determined not on the label given to it in the statute but on its substance. Section 2 of the Sales Tax Laws Validation Act which is the only substantive enactment therein makes no mention of any validation. It only provides that no law of a State imposing tax on sales shall be deemed to be

invalid merely because such sales are in the course of inter-State trade or commerce. The effect of this provision is merely to liberate the State laws from the fetter placed on them by Article 286(2) and to enable such laws to operate on their own terms. The true scope of the Act is that it lifts the ban imposed on the States against taxing inter-State sales and not that it validates or ratifies any such law. Considering the legislation on its substance, it is within the scope of the authority conferred on Parliament by Article 286(2) and is not *ultra vires*. The Act cannot also be held to be bad on the ground that it is retrospective in operation. Though it is in name a Validation Act, it is in essence a law lifting the ban under Article 286(2), and if no limitation on the character of that law could be spelt out of the language of that Article, then it must be upheld as within the authority conferred by it. By the expression "law of a State" in Article 286(2) and section 2 of the Sales Tax Laws Validation Act is meant whatever operates as law in the State and section 22 of the Madras Act is a law within those enactments. Section 22 of the Madras Act is therefore within the protection afforded by section 2 of the Validation Act. The decision in *Dialdas Parmanand v. P. S. Talwalkar* [1956] (7 S.T.C. 675) in so far as it held that it was not competent to the State to start fresh proceedings for assessment of tax on the strength of the Validation Act does not lay down correct law. The true construction of section 2 is that the two clauses therein are, as indicated by the conjunction, distinct and independent in their operation and that the laws of the States are kept in force in respect of sales which had taken place during the specified period, and that proceedings in respect thereof for assessment are within the protection of the Act. The Act is in no sense a temporary Act and its life is not limited to any specified period. It is a permanent statute operating on all sales which took place during the specified period. Where an enactment is unconstitutional in part but valid as to the rest, assuming that the two portions are severable, it cannot be held to have been wiped out of the statute book as it admittedly must remain there for the purpose of enforcement of the valid portion thereof, and being on the statute book, even that portion which is unenforceable on the ground that it is unconstitutional will operate *proprio vigore* when the constitutional bar is removed, and there is no need for a fresh legislation to give effect thereto. The fact that the Explanation to section 22 is invalid as to a part has not the effect of obliterating it out of the statute book, because it is valid as to a part and

has to remain in the statute book for being enforced as to that part. The result of the enactment of the Validation Act is to lift the ban under Article 286(2), and the consequence of it is that that portion of the Explanation which relates to sales in which property passes outside Madras but the goods are delivered inside Madras and which was unenforceable before, became valid and enforceable. Section 22 of the Madras Act and the corresponding provisions in other statutes cannot therefore be held to be null and void and *non est* by reason of their being repugnant to Article 286(2) and the bar under Article 286(2) having been removed, there is no legal impediment to effect being given to them. Entry 54 in List II of Schedule VII in the Constitution is successor to entry 48 in List II of Schedule VII in the Government of India Act, 1935, and it would be legitimate to construe it as including tax on inter-State sales, unless there is anything repugnant to it in the Constitution, and there is none such. Under the scheme of the entries in the Lists, taxation is regarded as a distinct matter and is separately set out. Article 286(2) proceeds on the basis that it is the States that have the power to enact laws imposing tax on inter-State sales. It is a fair inference to draw from these considerations that under entry 54 in List II of Schedule VII in the Constitution the States are competent to enact laws imposing tax on inter-State sales. SARKAR, J. (dissenting)—The Madras General Sales Tax Act, 1939, as adapted to the Andhra State does not authorise the taxing of a sale under which goods are delivered in Andhra but the property in them passes outside Andhra.—M. P. V. SUNDARARAMIER & CO. AND OTHERS v. THE STATE OF ANDHRA PRADESH AND ANOTHER [1958] 9 S.T.C. 298 (S.C.).

—The judgment of the Supreme Court in *M. P. V. Sundararamier & Co. and Others v. The State of Andhra Pradesh and Another* [1958] (9 S.T.C. 298) was followed in this case and the appeal was dismissed.—PASHABHAI PATEL & CO. (PRIVATE) LTD. v. S. I. H. RAZVI [1958] 9 S.T.C. 426 (S.C.).

Scope of Sales Tax Laws Validation Act, 1956.—The assessee-company with its factory in the State of Madras manufactured, assembled and sold motor vehicles and spare parts and accessories thereof, through an elaborate organisation spread over several States. The system of distribution of its motor vehicles, spare parts and accessories at one uniform price to consumers in the various States, which the assessee adopted, consisted of the appointment of a distributor, called a dealer, with a definite territorial jurisdiction, both inside and outside the State of Madras.

To every such dealer the assessee granted the sole right of selling its products within the territory allotted to him. If the territory of the dealer was outside the State of Madras, the agreement entered into by the dealer provided for the delivery of the assessee's products by consignment by rail or steamer or road transport. The question was whether in the year relevant to the assessment year 1952-53, the assessee was liable to sales tax under the Madras General Sales Tax Act, 1939, in respect of the sales in which the drivers of the outside State dealers took delivery of the cars from the assessee's factory in Madras State and transported them outside the State or whether the assessee was entitled to the exemption under Article 286(2) of the Constitution in respect of such sales. The High Court held that as the sales were completed and delivery was effected within the Madras State, the sales were liable to sales tax. On appeal to the Supreme Court: *Held*, that the assessee was liable to sales tax inasmuch as after the removal of the fetter of Article 286(2) of the Constitution by the Sales Tax Laws Validation Act, 1956, the Madras General Sales Tax Act, 1939, operating on its own terms made the transactions of sales liable to tax and the new section 22 inserted in the Act by Madras Act I of 1957 made no difference to that position. Although the Madras General Sales Tax Act, 1939, could not have said in express terms that it was taxing sales in the course of inter-State trade, what one had to see was that the fetter under Article 286(2) having been removed, did the Act operating on its terms affect the transactions in question even though they be in the course of inter-State trade? If it did, the assessment was no longer liable to challenge on the ground of the ban imposed by Article 286(2). Decision of the Madras High Court in *Ashok Leyland Ltd., Ennore v. The State of Madras* [1957] (8 S.T.C. 210) affirmed on different grounds.—*ASHOK LEYLAND LTD. v. THE STATE OF MADRAS* [1961] 12 S.T.C. 379 (S.C.).

Inter-State sales—Sales Tax Laws Validation Act—Whether empowered States to levy tax on inter-State sales.—Under section 3 of the Jammu and Kashmir Motor Spirit (Taxation of Sales) Act, 2005, a tax was levied on all retail sales of motor spirit. Section 6 provided that no person should carry on business as a retail dealer unless he held a valid licence. Sub-section (4) of section 7, which related to the procedure for grant of licence, provided that no licence under the Act should be granted to any person who did not hold a licence for the storage of dangerous petroleum. Pursuant to a contract between the Director-General of Supplies, Delhi, and the respondent for the supply of petrol to the State

Mechanized Farm at Nandpur in the State of Jammu and Kashmir, the officer-in-charge of the Nandpur farm placed indents with the respondent's depot at Pathankot in the Punjab State and the respondent supplied specified quantities of petrol, in its own tank-lorries and delivered the petrol to the farm at Nandpur. The price of petrol so supplied was paid to the respondent at Delhi by the Director-General of Supplies. The respondent had no storage depot or place of business within the State of Jammu and Kashmir at the material times and did not hold a licence for storage of petrol. The Petrol Taxation Officer assessed the respondent to pay sales tax for the period January, 1955, to May, 1959, under the Act on the petrol so supplied. The respondent applied under section 103 of the Constitution of Jammu and Kashmir and a Single Judge of the High Court held that the respondent was liable to pay sales tax only in respect of the sales which took place during the period January to September, 1955, and issued a writ restraining the appellants from levying tax for the period October, 1955, to May, 1959. On appeal, a Division Bench of the High Court quashed the assessment for the entire period. On appeal to the Supreme Court: *Held*, (i) that the sales were in the course of inter-State trade; (ii) that the Sales Tax Laws Validation Act by itself did not empower any State to levy any tax on sales or purchases in the course of inter-State trade but merely liberated the Sales Tax Acts of the several States from the fetter imposed by Article 286(2) of the Constitution and left the State Act to operate on its own terms. If there was no law in a State empowering the levy of a tax on sales or purchases in the course of inter-State trade or commerce, the State could not derive any advantage from the Sales Tax Laws Validation Act; (iii) that the provisions in regard to licence contained in sections 6 and 7 of the Jammu and Kashmir Motor Spirit (Taxation of Sales) Act, 2005, dealt with the machinery of collection and it was not permissible to construe the language of section 3 with reference to sections 6 and 7 or to place any restriction on the scope and effect of the charge of tax in the context of these sections. The requirement of section 6 was only a matter of machinery and did not affect the liability of the person who traded in petrol to pay tax in accordance with the charging section; (iv) that, on the assumption that there was appropriation of the goods to the contract at Nandpur, section 3 applied to the transactions of sale of petrol made by the respondent during the period from January 1, 1955, to September 6, 1955, and assessment of

sales tax made by the taxing authorities for this period was valid; (v) that though there was one order of assessment for the period January 1, 1955, to May, 1959, the assessment could be split up and dissected and the items of sale could be separated and taxed for different periods. The principle in *Bennett and White (Calgary) Ltd. v. Municipal District of Sugar City No. 5* ([1951] A.C. 786) had no application because the sales tax was imposed, in ultimate analysis, on receipts from individual sales or purchases of goods effected during the entire period; (vi) that, therefore, a writ of *mandamus* would issue directing the appellants not to realise sales tax with regard to transactions of sale during the period from September 7, 1955, to May, 1959.—*THE STATE OF JAMMU AND KASHMIR AND OTHERS v. CALTEX (INDIA) LTD.* [1966] 17 S.T.C. 612 (S.C.).

Inter-State sale or purchase—Sales Tax Laws Validation Act, 1956—Madhya Pradesh—Tobacco purchased from dealers outside State for manufacture of bidis inside State and sale outside State—Whether purchases exempt after passing of Sales Tax Laws Validation Act, 1956.—The appellant, a firm carrying on the business of manufacturing and selling bidis, was registered as a “dealer” under the Central Provinces and Berar Sales Tax Act, 1947. For the purpose of manufacture of bidis, it imported tobacco in large quantities from the State of Bombay. The tobacco was then rolled into bidis and were largely exported to other States for sale and consumption in those States. The registration certificate issued to the appellant did not comply with the language of Form II but merely specified as raw materials “tendu leaves, tobacco, yarn”. In the declaration made to the Bombay dealers for purchasing the tobacco tax-free the appellant had stated that it was purchasing tobacco for use as raw materials in the manufacture of goods for sale by actual delivery in Madhya Pradesh for the purpose of consumption in that State and that tobacco was so specified in its certificate of registration. In view of the decision of the Supreme Court in *Mohanlal Hargovind Das v. State of Madhya Pradesh* [1955] (6 S.T.C. 687), the Assistant Commissioner exempted the appellant from tax on the purchase of tobacco made in the State of Bombay, which after being imported into the State of Madhya Pradesh, was used as raw material for manufacturing bidis exported to other States. Pending appeals to the Deputy Commissioner, the Sales Tax Laws Validation Ordinance, 1956, and the Sales Tax Laws Validation Act, 1956, replacing it, came into force. Thereupon the Deputy Commissioner

issued notices to the appellant proposing to levy tax under section 4(6) of the Act, on the purchases of tobacco during the period November 7, 1953, to September 5, 1956. The appellant filed a writ petition in the High Court to have the notices quashed. The High Court however rejected the petition. On appeal to the Supreme Court: *Held*, (i) that in view of the Sales Tax Laws Validation Act, 1956, sales tax was leviable, as the C.P. and Berar Sales Tax Act, 1947, authorised the levy of tax on inter-State sales; (ii) that the only legitimate object which the purchasing dealer seeks in having a class of goods specified in the certificate of registration as “raw materials” is to purchase the goods tax-free in the sense contemplated by the Act. By asking for such specification the dealer represents that he intends to use the goods specified in the manufacture of other goods for the purpose of sale by actual delivery in the State Madhya Pradesh for the purpose of consumption in that State; (iii) that the technical omission of the Sales Tax Officer to make a specific entry in the certificate as required by section 4(6) did not confer any benefit if there was other incontrovertible evidence to show that the appellant did purchase the goods specified in the certificate as raw materials in the manufacture of any goods for the purpose of sale by actual delivery in Madhya Pradesh for the purpose of consumption in that State. *Modi Spinning and Weaving Mills Co. Ltd. v. Commissioner Sales Tax* [1963] (16 S.T.C. 310) relied on. *M. P. V. Sundararamier and Co. v. State of Andhra Pradesh* [1958] (9 S.T.C. 298) followed. Decision of the Madhya Pradesh High Court affirmed.—*MOHANLAL HARGOVIND DAS v. STATE OF MADHYA PRADESH AND OTHERS* [1967] 19 S.T.C. 263 (S.C.).

Sales outside State—Sales Tax Laws Validation Act (7 of 1956)—Whether removes ban on States' power to tax “outside” sales.—The Sales Tax Laws Validation Act, 1956, merely lifted the ban under Article 286(2) of the Constitution on the States' power to legislate but the ban imposed by Article 286(1)(a) of the Constitution prior to the Sixth Amendment was still effective and could not be removed by legislation of Parliament. The ban under Art. 286(1)(a) continued to apply without being affected by the Validation Act. Therefore even if a sale effected prior to September 6, 1955, fell within Explanation (2) to section 2(h) of the Madras General Sales Tax Act, 1939, it was beyond the competence of the Madras State to tax it if the assessee had delivered the goods outside the State for consumption therein. Decision of the Madras High Court in *Deputy Commissioner (C.T.), Coimbatore Division*,

Coimbatore v. R. M. Devan [1963] (14 S.T.C. 923); *Bombay Company Private Ltd. v. State of Madras* [1964] (15 S.T.C. 804) and *Deputy Commissioner of Commercial Taxes, Madurai Division, Madurai v. Madurai Knitting Company* [1964] (15 S.T.C. 807) affirmed.—*THE STATE OF MADRAS v. A. HABIBUR REHMAN & SONS* [1968] 21 S.T.C. 51 (S.C.).

Inter-State sales—State of Kerala—Sales Tax Laws Validation Act (7 of 1956)—Levy of sales tax on inter-State sales during period 31st March, 1951, to 5th September, 1955—Legality.—The Travancore-Cochin General Sales Tax Act, 1125, as it stood prior to the coming into force of the Constitution authorised the levy of sales tax on transactions of sale which were in the nature of sales in the course of inter-State trade and commerce. Section 26 of that Act, as amended in 1951, imposed a ban on the levy of tax on such sales after 31st March, 1951, subject to any exception which Parliament might by law provide. The Sales Tax Laws Validation Act, 1956, was enacted for the purpose of validating the levy and collection of taxes on such sales between 1st April, 1951, and 6th September, 1955, which would otherwise be invalid by reason of the decision in *The Bengal Immunity Company Ltd. v. The State of Bihar and Others* ([1955] 2 S.C.R. 603; 6 S.T.C. 446). The ban imposed by section 26 of the General Sales Tax Act, 1125, having been lifted by the Sales Tax Laws Validation Act, 1956, the State of Kerala was competent to levy and collect all taxes in respect of sales in the course of inter-State trade and commerce up to 5th September, 1955. [The Supreme Court did not consider in this case the validity and the scope of the amendment introduced in section 26 of the Travancore-Cochin General Sales Tax Act, 1125, by the Amendment Act 12 of 1957 inasmuch as the Act was only prospective and did not operate to invalidate any levy of tax imposed before. The Court also did not consider the question as to whether the State of Kerala had legislative competence to enact the General Sales Tax (Amendment and Validation) Act (9 of 1962) seeking thereby to amend section 26 of the Travancore-Cochin General Sales Tax Act, 1125, by substituting the date 6th September, 1955, in place of 31st March, 1951, and purporting to validate the levy and collection of taxes on sales and purchases falling within the purview of section 26(2A) of the principal Act as inserted by the Act of 1962.] Decision of the Kerala High Court in *Deputy Commissioner of Agricultural Income-tax and Sales Tax, Central Zone, Ernakulam v. The Cochin Coal Company Ltd.* [1963] (14 S.T.C. 845) reversed.—*THE STATE OF KERALA v. COCHIN COAL COMPANY LTD.* [1968] 21 S.T.C. 403 (S.C.).

DECISIONS OF HIGH COURTS

The decisions of the High Courts after the decision of the Supreme Court in THE BENGAL IMMUNITY Co.'s case [1955] 6 S.T.C. 446 are given below :—

—The petitioners carrying on a business of commission agency had their place of business in Calcutta. They had no place of business in U.P. Dealers in U.P. placed orders for the supply of goods with the petitioners at Calcutta and the orders were accepted there. Goods were then despatched by the petitioners from Calcutta by rail and were delivered to the dealers at the places where they carried on their business. The question was whether the petitioners could be assessed to sales tax by the U.P. Government: *Held*, that as the sales took place in the course of inter-State trade or commerce within the meaning of Article 286(2) of the Constitution, the petitioners could not be assessed to sales tax. *Held further*, that although no assessment had been made on the petitioners as the action of the officer in taking proceedings to impose tax on such sales was in contravention of the Constitution, the petitioners were entitled to relief under Article 226. *Bengal Immunity Company Ltd. v. The State of Bihar* [1955] (6 S.T.C. 446) followed. —*SHRI DULI CHAND KHERIA AND ANOTHER v. STATE OF UTTAR PRADESH AND OTHERS* [1956] 7 S.T.C. 70 (All.).

—A sale completed by delivery within the State of Madras to the purchaser or his agent does not come within the scope of Article 286(2) even if the purchaser bought the goods with the intention of transporting them outside the State and did transport them outside the State. Unless both the conditions of (1) a sale of goods, and (2) a transport of those goods from one State to another under the contract of sale are satisfied, there can be no sale in the course of inter-State trade. The linking up of transportation, that is, movement of the goods, with the sale itself in deciding whether a given transaction constitutes inter-State trade or commerce within the meaning of Article 286(2) is but an extension of the principle settled by the Supreme Court which marked off a sale for export from a sale in the course of export within the meaning of Article 286(1)(b). A sale for transport outside the State does not alter the fact that the sale itself was intra-State sale, a sale within the State of Madras. The subsequent transport by the purchaser is not part of the transaction of sale.—*THE INDIAN COFFEE BOARD, BATLAGUNDU v. THE STATE OF MADRAS* [1956] 7 S.T.C. 135 (Mad.).

—A limited company in Bombay was a registered wholesaler possessing a permit to bid at the coffee pool auction. The company

appointed a firm of commission agents in the Madras State to function as its purchasing agents. The authorisation by the company enabling the firm to bid at the auction was accepted by the Indian Coffee Board. In pursuance of this, the firm bid at the coffee pool auction on behalf of the company, took delivery of the goods and subsequently sent the goods to the company at Bombay. The question was whether the sales were exempt from taxation under Article 286(2) of the Constitution or were liable to tax under the Madras General Sales Tax Act, 1939: *Held*, that as between the seller, the Indian Coffee Board, and the buyer-company acting through its agent, the sale was completed by the delivery of the goods sold at the seller's premises within the State of Madras. The liability to tax under the Act arose at that stage and the seller was therefore liable to Madras sales tax.—*THE STATE OF MADRAS v. THE INDIAN COFFEE BOARD, BATLAGUNDU* [1956] 7 S.T.C. 522 (Mad.).

—The expression “in the course of” must be given the same meaning in clause (2) of Article 286 of the Constitution of India as it has in sub-clause (b) of clause (1). Therefore the first sale by a wholesale dealer of goods brought by him into the State of U.P. from another State is not a transaction “in the course of” inter-State trade or commerce and is accordingly not exempt from sales tax. The decision of the Supreme Court in *State of Travancore-Cochin and Others v. The Shanmugha Vilas Cashew-nut Factory and Others* [1953] (4 S.T.C. 205; [1954] S.C.R. 53) continues to be authority for the proposition that the first sale by an importer is not a sale “in the course of” import. As the first sale after importation is not an integral part of importation neither clause (b) nor clause (c) of sub-clause (d1) of rule 2 of the U. P. Sales Tax Rules, 1948, is invalid, as repugnant to Article 286. Where the petitioner was not prejudiced by the discrepancy existing between a notification and the section under which it was issued (because of subsequent amendment of the section) the petitioner was not entitled to the prayer that the notification be quashed.—*KHUBI RAM BRIJ KUMAR v. SALES TAX OFFICER, GHAZIABAD* [1956] 7 S.T.C. 813 (All.).

—Where in respect of certain sales, the buyers were outside the State of Travancore-Cochin but the delivery of goods was effected to the agents of those buyers within the State: *Held*, that the sales did not take place “in the course of inter-State trade or commerce” and were therefore not exempt from taxation under Article 286(2) of the Constitution.—*K. A. DAVIES v. SALES TAX*

OFFICER, FIRST CIRCLE, TRICHUR, AND ANOTHER [1956] 7 S.T.C. 829 (Trav. Co.).

—The assessee-company assembled motor cars in Madras State and sold these cars to dealers outside State. In respect of certain sales, the outside State dealers sent their drivers to the assessee's factory who took delivery of the cars and transported them outside the State. The assessee contended that though the delivery of the cars was effected within the Madras State, as such delivery was for immediate transport of the cars sold outside the State, the sales were in the course of inter-State trade within the meaning of Article 286(2) of the Constitution and were therefore exempt from taxation: *Held*, that as the sales were completed and delivery was effected within the Madras State, the sales were liable to sales tax under the Madras Act. The stream of inter-State trade or commerce commenced only after the dealer as buyer took delivery of the goods, and the antecedent sale to him by the assessee was a distinct and closed transaction before that stream commenced. *The Indian Coffee Board, Ballagundu v. State of Madras* [1956] (7 S.T.C. 135) followed.—*ASHOK LEYLAND LTD., ENNORE v. THE STATE OF MADRAS* [1957] 8 S.T.C. 210 affirmed by the Supreme Court on different grounds in [1961] 12 S.T.C. 379 (S.C.).

—A sale can be said to be in the course of inter-State trade within the meaning of Article 286(2) of the Constitution only if two conditions concur: (i) A sale of goods, and (ii) a transport of those goods from one State to another under the contract of sale. Unless both these conditions are satisfied, there can be no sale in the course of inter-State trade. The petitioners, who were commission agents with authority to purchase goods on behalf of their non-resident constituents, fixed and paid the price on behalf of the constituents and subsequently despatched the goods to them. The bills sent to the constituents contained the amounts spent by the petitioners on account of packing, postage, and other incidental and customary charges. Transportation across the State frontier was not a term of the contract of sale: *Held*, that the purchase could not be considered as purchase which took place “in the course of inter-State trade or commerce” and was therefore not exempt from taxation under Article 286(2). View of *VENKATARAMA AYYAR, J.*, in his dissenting judgment in *Bengal Immunity Company Ltd. v. State of Bihar* [1955] (6 S.T.C. 446), *Indian Coffee Board v. State of Madras* [1956] (7 S.T.C. 135) and *Ashok Leyland Ltd. v. State of Madras* [1957] (8 S.T.C. 210) relied on.

Observations of DAS, J., in *State of Travancore-Cochin and Others v. Shanmugha Vilas Cashew-nut Factory and Others* [1953] (4 S.T.C. 205) and of BOSE, J., in *State of Bombay and Another v. United Motors (India) Ltd. and Others* [1953] (4 S.T.C. 133) distinguished.—KERALA ARECANUT Co. v. STATE OF TRAVANCORE-COCHIN [1957] 8 S.T.C. 817 (Ker.).

—The assessee-company carrying on the business of manufacturing cigarettes and other tobacco goods in Bangalore sold part of the goods so manufactured for consumption within the Mysore State and a part for consumption outside the State. Under an agreement entered into between the assessee and a company in Calcutta the assessee had to consign all goods manufactured pursuant to orders placed by the Calcutta company in accordance with the directions of the Calcutta company. Property in the goods was to pass from the assessee to the Calcutta company when such goods were delivered to the carrier at the assessee's factory for despatch to the Calcutta company. The invoice amount was to be credited to the account of the assessee in the books of the Calcutta company. In respect of the goods sold outside the State it was found that the goods were put in wagons at Bangalore for being conveyed to outside destinations. The question was whether the sales outside the State were exempt from sales tax by virtue of the provisions of Article 286 of the Constitution: *Held*, (1) that the goods sold by the assessee to persons outside the State could not be considered to have been actually delivered to them within the Mysore State within the meaning of the Explanation to Article 286(1)(a); (2) that the ban under Article 286(1)(a) read with the Explanation thereto therefore applied to the case and so the assessee was not liable to pay sales tax with respect to the goods sold to persons outside the State and that the President's Sales Tax Continuance Order, 1950, issued under clause (2) would not lift the ban placed by clause (1).—DEPUTY COMMISSIONER OF SALES TAX, BANGALORE, *In re* [1957] 8 S.T.C. 248 (Mys.).

—The amendments to section 15(1)(b) of the Assam Sales Tax Act, 1947, made by section 4 of the Assam Sales Tax (Amendment) Act, 1951, and rule 80 of the Assam Sales Tax Rules, 1947, were illegal and *ultra vires* the Legislature inasmuch as the amendments authorised the imposition of tax on the sale or purchase of goods which might take place in the course of inter-State trade or commerce and was therefore in violation of Article 286(2) of the Constitution. RAM LABHAYA, J.—Where the petitioner

purchased goods within the State for the purpose of resale outside the State and the two transactions were independent of each other, the petitioner was not entitled to the exemption under Article 286(2) of the Constitution.—RAMESH CHANDRA DEY v. THE STATE OF ASSAM AND OTHERS [1957] 8 S.T.C. 384 (Assam). Reversed by Supreme Court in [1961] 12 S.T.C. 441. See page 354 *supra*.

—The definition of sale as given in section 2(g) of the Bihar Sales Tax Act, 1947, as amended by the Bihar Sales Tax (Amendment) Act, 1948, is *ultra vires* the Provincial Legislature to the extent it contravenes Article 286 of the Constitution. Therefore the assessee could not legally be taxed in respect of sales of goods delivered outside the State of Bihar after the 26th January 1950.—INDIAN CABLE Co., LTD. v. THE STATE OF BIHAR [1957] 8 S.T.C. 841 (Pat.).

—The assessee claimed deduction from their turnover under Article 286(2) of the Constitution of the value of some jute despatched to some jute mills outside the State of Orissa under instructions from P in Madhya Pradesh. It was found that the goods were sold to P and the delivery was given inside the State but the goods were subsequently despatched outside the State by or under the instructions of P: *Held*, that the transaction between the assessee and P was not exempt from levy of sales tax by the State of Orissa under Article 286(2) of the Constitution. The sale to the mills outside the State of Orissa had nothing to do with the sales by the assessee to P. The sale to P having been completed inside the State, it could not be said that it had itself occasioned the export and thus assumed a complexion of intra-State trade at its inception. Besides, the sale to outside mills was the result of a separate contract with them and, therefore, it could not be said that the sale by the assessee to P was in the course of inter-State trade.—S. R. AGARWALLA AND BROTHERS v. THE COLLECTOR OF SALES TAX, ORISSA [1958] 9 S.T.C. 31 (Ori.).

—The provisions of section 2(g) of the Bihar Sales Tax Act, 1947, as amended by Bihar Act VI of 1949 were constitutionally valid and the imposition of sales tax by the Revenue authorities for the period from 1st April, 1949, to the 25th January, 1950, with regard to the sale of goods delivered outside the State of Bihar was constitutionally valid. An assessee was exempt from payment of sales tax under Article 286(1)(a) of the Constitution for the period from 26th January, 1950, to 31st March, 1950, only if there was proof that the goods were delivered and consumed in the State of first destination and

the sales would not be exempted if the goods were not consumed in the State of first destination but were re-exported from the State of first destination to other States.—*INDIAN COPPER CORPORATION LTD. v. THE STATE OF BIHAR AND OTHERS* [1958] 9 S.T.C. 204 (Pat.). Modified by Supreme Court in [1961] 12 S.T.C. 56. See page 353 *supra*.

—The ban imposed under Article 286(1)(a) read with the Explanation is a ban independent of the ban imposed by Article 286(2), although transactions falling within the latter clause may also fall within the category of transactions covered by the former. The President's Sales Tax Continuance Order, 1950, has the effect only of lifting the ban under clause (2), because the proviso which enabled the issue of such an order is a proviso only to that clause. Under the general law, normally a sale takes place in the State in which property in the goods passes. The general rule is by the Explanation to Article 286(1)(a) cut into to the extent specified and no more; but it cannot be said that there cannot be an outside sale or purchase with reference to a particular State unless it can be postulated that there is a State in respect of which a particular transaction is an inside sale by reason of the Explanation. *Indian Steel and Wire Products Limited v. Superintendent of Commercial Taxes* [1956] (7 S.T.C. 776; A.I.R. 1957 Pat. 1127) dissented from.—*SRI RAMA PURCHASE AND SALE SOCIETY LTD. v. THE STATE OF MADRAS (Now ANDHRA PRADESH)* [1958] 9 S.T.C. 761 (A. P.).

—Where certain sales between the petitioners and the purchasers were effected within the State and the goods were booked by rail to stations outside the State by the purchasers figuring both as the consignor and the consignee: *Held*, that the transactions were not hit by Article 286 of the Constitution.—*M. V. BHADRIAH SETTI v. THE STATE OF ANDHRA* [1959] 10 S.T.C. 222 (A. P.).

—*Scope of Article 286(1)(a) and Explanation and Article 286(2)—Delivery of goods at railway stations within State for despatch outside State.*—Sec. 3(1A) of the Assam Sales Tax Act, 1947, had the effect of taking out of the definition of "sale" in sec. 2(12), sales which were of an inter-State character and with regard to such classes of sales, section 23(2) of the Sale of Goods Act, 1930, dealing with appropriation of the goods to the contract, would not be relevant. In order to make a sale complete within the State of Assam, the actual delivery had to take place within the State. Sales where the actual delivery took place outside the State were inter-State sales and were

taken out of the purview of the definition of sale in the Assam Act, even if the title to the goods passed within the State. The delivery contemplated in the Explanation to Article 286(1)(a) of the Constitution was not a constructive delivery to the carrier but actual delivery. The Explanation to Article 286(1)(a) fixed the situs of the sales which were of an inter-State character for the purpose of taxation and the sale by virtue of the Explanation would be deemed to have taken place in the State in which the goods were delivered for the purpose of consumption therein. For every other State, it would be an outside sale and not liable to be taxed. Consequently even though the delivery did not take place for consumption in the States to which the goods were despatched and the sales could not be regarded as having taken place in those States by virtue of the Explanation to Article 286(1)(a), it would not give power to the State, from which the goods were despatched, to tax such sales as they were still outside sales in relation to that State. The provisions of Article 286(2) of the Constitution were incorporated in section 3(1A) (iii) of the Assam Sales Tax Act, 1947, and inter-State sales, even though covered by the Explanation to Article 286(1)(a) would be affected by the provisions of Article 286(2) and section 3(1A)(iii) of the Assam Act unless the ban provided by Article 286(2) was removed by Parliament. The purpose of the Sales Tax Laws Validation Ordinance, 1956, and the subsequent Sales Tax Laws Validation Act, 1956, was to validate the levy and collection of tax by the delivery State and not to validate the levy or collection of tax of the States which were not delivery States. Sales which were outside sales and were not covered by the Explanation to Article 286(1)(a) were also hit by Article 286(2) and the Validation Act did not affect such sales. Delivery to a carrier would be an appropriation in cases where the buyer authorises the despatch of the goods through that agency but the appropriation involved in such act need not be unconditional. In cases where the delivery of the goods to the carrier is the only fact relied upon for constituting appropriation and so the transfer of property, it has to be unconditional. The assessee was a dealer registered under the Assam Sales Tax Act, 1947. His principal business consisted in the purchase of sal sleepers and sale thereof to the railway department of the Government of India, and public bodies. The assessee entered into an agreement with the President, Eastern Group Sleepers Control acting for and on behalf of the President of India, to supply and deliver to the State wooden sleepers to the number,

description and quantity at the price or prices and at the times and places and in the manner detailed in the Schedule appended to the agreement. Paragraph 11(a) of the agreement provided as follows:—"After passing the contractor shall apply to, and obtain from the Sleeper Control Officer, Eastern Group, his orders as to the despatch of the passed sleepers which will then be disposed of by the contractor either by handing over to the consignee or by loading into railway wagons and booking under Risk Note 'B' by rail to the consignee to whom the sleepers are allotted." Under the agreement the supply of wagons was in no way the responsibility of the Sleeper Control Officer or his staff. The assessee despatched the sleepers, after they were passed, from different railway stations within the State of Assam to stations outside Assam according to the allotment made by the authorities and the allotments were made having regard to the requirement and necessity of each station: *Held*, that the handing over of the sleepers to the carrier did not constitute actual delivery to the buyer or his agent. The sleepers were actually delivered in the allottee State for the purpose of consumption therein and therefore the sales were exempt under Article 286 and were not liable to be taxed under the Assam Sales Tax Act, 1947.—*BIRENDRA NATH GUHA v. COMMISSIONER OF TAXES, ASSAM* [1959] 10 S.T.C. 327 (Assam).

—*Scope of Article 286(1)(a), (2)—Validity of Explanation 2 to Section 2(h), Madras Act—Goods in Madras State when contract of sale is made—Sales taking place during period when Sales Tax Continuance Order, 1950, was in force—Goods delivered outside Madras State as a result of such sale—No evidence that delivery was for purpose of consumption in that State—Right of Madras State to tax such sales under Explanation 2 to Section 2(h)—Whether sales exempt under Article 286(1)(a).—*Explanation 2 to section 2(h) of the Madras General Sales Tax Act, 1939, which fixed the situs of a sale in the Madras State if the goods were within the State at the time the contract of sale was made satisfied the test of sufficient territorial nexus and was therefore constitutionally valid. The bans imposed by the several clauses of Article 286 of the Constitution were intended only for such sales as were within the taxing powers of the States as contemplated by Articles 245 and 246(3) read with entry 54 in List II of the Seventh Schedule because sales where all the component parts took place outside the State were not at all amenable to taxation and did not require any such bans. Moreover whatever the bans that may be imposed, they

will be operative only to the extent warranted by their clear language and necessary implication. Therefore such of those sales not falling within the Explanation to Article 286(1)(a) and not hit by the other bans imposed by Article 286 are to be dealt with according to the law of the State fixing the situs of the sale. In respect of certain sales, which took place during the period when the Sales Tax Continuance Order, 1950, was in force, the goods were within the Madras State when the contract of sale was made, but the actual delivery of the goods as a result of the sale took place outside the Madras State. There was however no evidence on record to show that the delivery was for the purpose of consumption in the delivery State. The assessee did not adduce any evidence on that point and the taxing authorities were therefore not called upon to give a finding on that fact. The question was whether the sales were liable to be taxed by virtue of Explanation 2 to section 2(h) of the Madras General Sales Tax Act, 1939: *Held*, (1) that there was no presumption in law that the goods delivered were necessarily for the purpose of consumption or use in the delivery State and not for any other purpose; (2) that as the assessee failed to establish the exemption under Article 286(1)(a) and as the sales were not hit by any of the other bans of Article 286, the sales were liable to be taxed by virtue of Explanation 2 to section 2(h) of the Madras General Sales Tax Act, 1939.—*BATCHU SUBBA RAO & Co. v. COMMERCIAL TAX OFFICER, EAST GODAVARI, KAKINADA* [1959] 10 S.T.C. 394 (A. P.).

—*Whether Article 286 affects inter-State sales during periods before Constitution came into force.*—The bar on collection of sales tax on inter-State sales was introduced for the first time by Article 286 of the Constitution of India and it cannot affect the levy or collection of tax in respect of the periods before the date on which the Constitution came into force.—*P. V. MOHAMMED v. THE COLLECTOR OF PALGHAT* [1959] 10 S.T.C. 422 (Ker.).

—*"Actual delivery" meaning of—Seller outside State—Delivery F.O.R. outside State or ex-godown outside State.*—The words "actual delivery" in the Explanation to Article 286(1) of the Constitution of India are used in contrast to constructive delivery as meaning physical delivery of the goods. The constructive delivery of the goods by the seller to a carrier for transmission to the buyer is not actual delivery within the meaning of the Explanation. The petitioner-company was assessed to sales tax on its turnover of sales effected to persons in Uttar Pradesh by its head office in Calcutta and branches at Bombay and

Madras. The contracts of sale provided for delivery ex-godown Calcutta/Madras/Bombay or F.O.R. Calcutta/Madras/Bombay. The sales were for specific and ascertained goods in a deliverable state and the goods were despatched by the petitioners to the destinations in Uttar Pradesh to which the buyers desired them to be sent for consumption in Uttar Pradesh. The sales were on credit basis, payment being made by the buyers against the sales bills and railway receipts either directly or through bank or by V.P.P. In the case of sales F.O.R. Calcutta/Madras/Bombay, the petitioner debited the buyers with the railway freight and in the case of sales "ex-godown", the petitioner debited the buyer with the railway freight and the cost of carriage of the goods from the godown to the railway station: *Held*, that the actual delivery of the goods as a result of the sale took place in Uttar Pradesh within the meaning of Explanation to Article 286(1) of the Constitution and the sales were therefore liable to sales tax in Uttar Pradesh.—*CAPCO LIMITED v. SALES TAX OFFICER, KANPUR, AND ANOTHER* [1960] 11 S.T.C. 34 (All.).

—*Sales outside State—Scope of Explanation to Article 286(1).*—A sale where the goods are delivered inside the State for the purpose of consumption in several places outside that State does not fall within the Explanation to Article 286(1) of the Constitution of India prior to its amendment by the Constitution (Sixth Amendment) Act, 1956, but it may yet be a sale inside that State. The Explanation does not say that a sale which is not an Explanation sale must necessarily be a sale outside the State. The fact that a buyer intends to consume the goods in some outside place does not convert a domestic sale into a sale of an inter-State character or make it a sale outside the State. The place where the goods are consumed cannot localise the sale or fix its venue or situs. Under the general law independently of and apart from any statutory provision the place of sale of goods for purposes of taxability to sales tax is the place where the goods are situated at the time when the property in the goods passes. The petitioner, a limited company with its office in the State of West Bengal, was engaged in the manufacture of railway wagons. By a letter posted in New Delhi, the Railway Board placed an order with the managing agents of the petitioner for the manufacture of certain railway wagons and this order was accepted by the managing agents of the petitioner by a letter posted in Calcutta. According to the terms of the contract the delivery of the wagons to the Railway Board was made at the petitioner's works siding situated in

West Bengal and payments were made in Calcutta. The wagons were meant for consumption by the Western Railway whose railway lines were spread over several States and were all outside West Bengal. The question was whether the transactions effected by the petitioner during the years 1952-53 and 1953-54 were liable to sales tax under the Bengal Finance (Sales Tax) Act, 1941. *SINHA, J.*, held that as the wagons were delivered within West Bengal, the transactions were not "Explanation sales" and were not exempt under Article 286(1)(a), but they were inter-State sales and came within the exemption granted by Article 286(2) and as they were effected between 1st April, 1951, and 6th September, 1955, tax could be levied by virtue of the Sales Tax Laws Validation Act, 1956. On appeal by the petitioner: *Held*, that the sales effected by the petitioner could not be said to have taken place outside the State of West Bengal and the power of the State to tax the sales was not taken away by Article 286(1)(a) read with the Explanation and that as the sales took place in the State of West Bengal they could be assessed to sales tax under the Bengal Finance (Sales Tax) Act, 1941. [The Court found it unnecessary to decide whether the sales took place in the course of inter-State trade or commerce]. Decision of *SINHA, J.*, in *Indian Standard Wagon Co., Ltd. v. Commercial Tax Officer* [1958] (9 S.T.C. 553) affirmed.—*INDIAN STANDARD WAGON CO., LTD. v. COMMERCIAL TAX OFFICER AND OTHERS* [1960] 11 S.T.C. 47 (Cal.).

—*Purchase by spinning mill in Madras State of cotton imported from abroad by Bombay dealers—Whether purchase exempt under Article 286 (1)(b) or 286 (2).*—See *DHANALAKSHMI MILLS LTD. v. STATE OF MADRAS* [1960] 11 S.T.C. 306 (Mad.). See page 335 *supra*.

—*Deliveries to dealers or their agents inside State and subsequent transportation to outside State.*—A sale completed by the delivery of the goods within the State to the buyer or his agent was not a sale in the course of inter-State trade or commerce within the meaning of Article 286(2) of the Constitution of India prior to its amendment by the Constitution (Sixth Amendment) Act, 1956, even if the buyer bought the goods solely for transporting them outside the State and did transport them. The assessee, a dealer in automobiles, was assessed to sales tax on the price paid to them for the sale of motor cars to its sub-dealers, who resided outside the State of Madras and who were bound under the terms of their contract with the assessee to sell those cars within their respective areas, all of which were outside the State of Madras. Those cars were

however delivered to the sub-dealers or their agents at Madras and were subsequently taken by those sub-dealers outside the State for sale within their respective areas. The assessee contended that these sales were sales in the course of inter-State trade or commerce within the meaning of Article 286 (2) of the Constitution prior to its amendment and were therefore not liable to be taxed: *Held*, that the sales were intra-State sales within the State of Madras and were not sales in the course of inter-State trade or commerce within the scope of Article 286(2) and therefore they were liable to be taxed. The decisions of the High Court in *Indian Coffee Board v. The State of Madras* [1956] (7 S.T.C. 135), *State of Madras v. Indian Coffee Board* [1956] (7 S.T.C. 522) and *Ashok Leyland v. State of Madras* [1957] (8 S.T.C. 210) do not require reconsideration. The High Court is bound by the principles laid down by the Supreme Court in *State of Travancore-Cochin v. S. V. C. Factory* [1953] (4 S.T.C. 205), *State of Madras v. Gurviah Naidu* [1955] (6 S.T.C. 717) and *State of Mysore v. Mysore Spinning and Manufacturing Co. Ltd.* [1958] (9 S.T.C. 188), though these decisions were with reference to sales within the scope of Article 286 (1) (b) of the Constitution.—*ADDISON & Co., LTD., MADRAS v. THE STATE OF MADRAS* [1960] 11 S.T.C. 345 (Mad.).

—*Contract of sale and payment of price outside State—Goods delivered outside State.*—Where a contract for sale and the payment of price were made in Calcutta and the goods were delivered outside the State of Assam for the purpose of consumption therein, even if the goods at the time of the contract existed in Assam and the title to the goods passed in Assam under the Sale of Goods Act, 1930, it could not be said that it was an inside sale assessable under the Assam Sales Tax Act, 1947. Once it is established that a sale is an inter-State sale, the situs of the sale will have to be fixed in accordance with the provisions of the Explanation to Article 286(1) of the Constitution and it will be an inside sale only in respect of that State wherein it is delivered for consumption and for all other States including the exporting State or the title State it will be an outside sale having no power to tax. The question whether an assessee has sold the goods to a registered dealer who has mentioned these goods in his certificate of registration as intended for resale is a question of fact which is within the competence of the assessing authority to investigate and decide. Only that part of rule 80 of the Assam Sales Tax Rules, 1947, which gave effect to the amendment made in section 15 of the Act had been declared illegal by the decision in *Ramesh Chandra Dey v. State of Assam* [1957]

(8 S.T.C. 384). No objection could therefore be taken to rule 80 in so far as it enjoined upon the assessee before getting a deduction under section 15 to produce a declaration in writing by the purchasing dealer that the goods were mentioned in the purchasing dealer's certificate of registration and were intended for resale.—*SURMA MATCH AND INDUSTRIES (PRIVATE) LTD. v. COMMISSIONER OF TAXES, ASSAM* [1960] 11 S.T.C. 381 (Assam).

—*Distributors directing factories outside State to supply goods to customers within State.*—The assessee, who were distributors of cement, had a branch office in the State of Mysore and were registered as dealers under the Mysore Sales Tax Act, 1948. The assessee supplied cement to the public and also to the Director-General of Supplies and Disposals, Government of India, or to such persons authorised by the said officer for consumption within the State of Mysore. The question was whether the levy of sales tax on these transactions by the State of Mysore during the period 7th September, 1955, to 31st March, 1956, was valid in view of the provisions of Article 286 of the Constitution of India. In respect of the supplies of cement to the public, it was found that the assessee accepted the offers from the buyers, collected the sale price from them and directed one of the factories situated outside the State of Mysore to supply the cement to them. The goods were loaded in the railway wagons at the railway sidings of the factory and were despatched to the buyers inside State. In respect of the supplies of cement to the Director-General of Supplies and Disposals, it was found that orders were placed with the assessee in Mysore, who directed one of the factories outside the State of Mysore to supply the cement F.O.R. ex-works and that the goods were actually delivered to the Director-General of Supplies and Disposals or to his authorised agent within the State of Mysore and the entire quantity of cement so supplied was actually utilised for works within the State of Mysore: *Held*, that the transactions relating to the sale of cement both to the public and the Supply Department were not inter-State transactions but were sales that took place in the State of Mysore and were therefore liable to be taxed under the Mysore Sales Tax Act, 1948.—*THE CEMENT MARKETING CO. OF INDIA PRIVATE LTD. AND ANOTHER v. THE STATE OF MYSORE AND ANOTHER* [1960] 11 S.T.C. 411 (Mys.). Reversed by the Supreme Court in [1963] 14 S.T.C. 175. See pages 195-196 *supra*.

—*Explanation sales—Actual delivery—Seller outside State—Contract with buyer inside State.*—The petitioner-company having its place of business

in Uttar Pradesh manufactured sugar for the sale of which they gave sole agency to a party in Kanpur. The sole agents secured orders from different parties called "buyers" who then entered into other transactions of resale. According to the instructions of the "buyers" the petitioner despatched the goods to various destinations. The actual delivery of the goods in regard to all the consignments was in Bihar and in the railway receipts the consignor was noted as the petitioner, the consignee being "self". The petitioner contended that the actual delivery of the goods in Bihar was as a direct result not of the first sale with the "buyers" but of the subsequent sales by them and as such the sales did not come within the scope of the explanation to clause (g) of section 2 of the Bihar Sales Tax Act, 1947, and as such were exempt from the levy of sales tax: *Held*, that under the agreement there was no privity of contract between the petitioner and the ultimate buyers and that the movement of the goods and the actual delivery took place and were directly referable to the original contract. Therefore the transactions came within the scope of the explanation to clause (g) of section 2 and the petitioner was liable to sales tax.—PUNJAB SUGAR MILLS CO., LIMITED *v.* THE STATE OF BIHAR [1960] 11 S.T.C. (T.D.) 9.

—*Delivery of goods inside State by agent—Subsequent despatch of goods to principal outside State—Whether an inter-State sale.*—The appellants doing business in cotton purchased cotton inside the State for dealers in the Bombay State. The appellants signed the contract forms as agents for the Bombay dealers, paid the price to the sellers, supervised the testing and pressing operations, took delivery of the cotton bales and despatched them to the Bombay dealers as per their instructions as and when wagons were available. The appellants charged the Bombay dealers for pressing and incidental charges together with sales tax, commission and dharmam: *Held*, (1) that the appellants were liable to pay sales tax under section 14-A as agents of the non-resident principal, and that they were not exempt under Notification G.O. 319 dated 10th July, 1951; (2) that as the sale was completed inside the State and nothing remained to be done by the seller, the sale was not an inter-State sale and was therefore not exempted under Article 286(2) of the Constitution. The fact that the appellants had to send the goods on their account to their principal did not render the sale an inter-State sale. The case would be different if some of the ingredients of sale were completed outside the State or though

all the essential ingredients took place within the State, transport of the goods took place across the borders of the State as part and parcel of the transaction of sale itself. Whether the sale has inter-State elements or not and whether it was made in the course of inter-State trade is a matter to be determined in the particular circumstances of each case.—SRIRAM VENKATA SUBBARAO AND SON *v.* THE STATE OF ANDHRA PRADESH [1960] 11 S.T.C. 646 (A.P.).

—*Sale whether in the course of inter-State trade.*—The question whether a particular sale has been made in the course of inter-State trade or not largely depends upon the particular facts and circumstances of each case. Where there is no relationship between the transaction of sale and the movement of goods, and the export of goods does not necessarily arise out of the sale and is not part and parcel of the sale, it cannot be said to be a sale in the course of inter-State trade. The flow of goods into different States ought to be the direct result of the uninterrupted course of the transaction of sale to be caught up in the vortex of what is said to be the course of inter-State trade or commerce. Where in respect of a sale the delivery was contemplated to be effected in the State itself and the movement of goods thereafter depended largely upon certain circumstances and conditions which in no way formed part of the sale transaction and with which the seller was in no way connected, the sale could not be said to be a sale in the course of inter-State trade or commerce within the meaning of Article 286(2).—RAI SAHIB RAMDAYAL GHASIRAM *v.* GOVERNMENT OF ANDHRA PRADESH [1960] 11 S.T.C. 705 (A. P.).

—*Movement of goods across State border after completion of sale—Whether sale in the course of inter-State trade.*—If after a sale is completed within one State the buyer transports the goods to another State the transaction is not in the course of inter-State trade or commerce. The mere fact that there is a movement of goods is not sufficient to constitute inter-State trade. In addition, it should be under a contract of sale.—A. S. KRISHNA & Co. *v.* SALES TAX OFFICER [1961] 12 S.T.C. 640 (A. P.).

—*Scope of Article 286(2).*—What the Supreme Court has held to be inter-State sales for purposes of the Central Sales Tax Act, 1956, in *Tata Iron and Steel Co. Ltd. v. S. R. Sarkar* [1960] (11 S.T.C. 655) would be a safe guide for determining what is part of inter-State commerce and is exempted under Article 286(2) of the Constitution. But the movement contemplated in the said case must be closely linked with the sale of goods and

is not intended to cover later movement undertaken for the better enjoyment of goods after the title had passed. If the owner moved his own goods to outside State for their better enjoyment of what has been earlier acquired, the journey would not in the commercial sense form part of the flow or course of trade and, therefore, would not be exempt.—*T. BAPPUTY AND ANOTHER v. THE GOVERNMENT OF KERALA* [1961] 12 S.T.C. 722 (Ker.).

—*Delivery of railway sleepers within State for consignees outside State.*—The assessee entered into a contract for the supply of sleepers to the railways and agreed to deliver the sleepers at the railway stations within the Kerala State. The agreement provided as follows: "After passing, the contractor will apply to and obtain from the Chief Engineer orders as to the disposal of the sleepers passed. On receipt of instructions from the Chief Engineer the contractor shall load the sleepers into railway wagons and book them by rail to the consignee, to whom the sleepers are allotted.....The contractor shall immediately after loading apply for and obtain from the sleeper inspector a tally receipt for the number loaded. Such sleepers as are acknowledged by the consignee as possessing the passing mark of the passing officer and the private mark of the contractor will be deemed fully delivered subject, however, to the right of the Government to have such sleepers re-inspected at any time within 2 months after they have been passed." The assessee was paid 90 per cent. of the value of the sleepers loaded on production of the railway traffic receipts and the balance of 10 per cent. was paid only after the sleepers were actually delivered at the destination or 2 months after date of passing whichever period was longer. The assessee claimed that the price of sleepers sold to the railways was exempted under Article 286(2) of the Constitution but the assessee was assessed to sales tax on the ground that the contract was concluded inside the State and the delivery was effected at railway stations within the State: *Held*, that the title passed with the delivery of sleepers at railway stations within the Kerala State and the later movement was for the better enjoyment of the goods. The agreement did not put the sleepers into the channel of inter-State trade, but the journey was started after the goods had been delivered and largely paid. The sales were therefore not inter-State sales within the meaning of Article 286(2), and were not exempt from taxation.—*BAPPUTY v. GOVERNMENT OF KERALA* [1961] 12 S.T.C. 722 (Ker.).

—*Wholesaler resident in Madras purchasing tobacco in Andhra—Subsequent sale to assessee after bringing tobacco to Madras.*—What section 22 of the Madras General Sales Tax Act, 1939, requires is not only that a sale or a purchase should be for consumption within the State of Madras, but that the delivery in Madras should be the direct result of the sale or purchase. The assessee, a dealer in tobacco, bought tobacco from a wholesale merchant resident within the Madras State who held L-5 licence. The wholesale merchant bought tobacco both within the Madras State and the Andhra State, but he had no L-5 licence to store his purchases in Andhra State. He employed a commission agent in Andhra to buy tobacco on his behalf and got it bonded in the warehouse of the commission agent for which the commission agent held L-5 licence. Purchases were also effected through the representatives of the wholesaler sent over to Andhra. Subsequently whenever the wholesaler required tobacco to be sent over to the Madras State the commission agent sent the tobacco, which was then bonded in the warehouse of the wholesaler in the Madras State and delivered to the assessee when he bought it: *Held*, that the assessee was the first purchaser of the tobacco within the State within the meaning of section 5(viii) of the Act. As a result of the purchase of the tobacco by the wholesaler within the Andhra State, the delivery of that tobacco was within the Andhra State. The subsequent transport of that tobacco by the wholesaler was that of his own goods, and that could not be said to be the direct result of his purchase in Andhra. When the assessee effected his purchase in Madras there was no element of transport at all to bring it as a case of delivery direct or otherwise within the meaning of section 22.—*K. PALANIAPPA NADAR v. THE STATE OF MADRAS* [1961] 12 S.T.C. 338 (Mad.).

—*Explanation sales—Claim for exemption—Whether assessee should prove that goods were actually consumed in State of first destination.*—If goods were as a direct result of a sale delivered outside the State for the purpose of consumption in the State of first delivery, an assessee would be entitled to exemption under the Explanation to Article 286(1)(a) of the Constitution and it would not be necessary for the assessee to prove further that the goods so delivered were actually consumed in the State of first destination. *Indian Copper Corporation Ltd. v. The State of Bihar* [1961] (12 S.T.C. 56) followed.—*COMMISSIONER OF SALES TAX, ORISSA v. SAKHIGOPAL COCOANUT GROWERS' CO-OPERATIVE SOCIETY* [1961] 12 S.T.C. 652 (Orissa).

—*Explanation sales—Delivery outside the State.*—The appellant sold certain goods to commission agents, who were acting for dealers outside the State, and received the full price from the agents but booked the goods to places outside the State in his own name as consignor and consignee under the instructions of the agents. The appellant also endorsed the railway receipts in favour of the agents. Nothing further remained to be done by the appellant in furtherance of the contract. On the question whether the sales were exempt under the Explanation to Article 286(1)(a) of the Constitution: *Held*, that the commission agents purchased the goods on behalf of their principals residing in other States and they were not the agents of the sellers. The delivery of the goods outside the State was not the direct result of the sale. Therefore the transactions should be regarded as inside sales and were not exempt under the Explanation to Article 286(1)(a). *Sri Ramakrishna Commercial Society Ltd. v. The State of Andhra (Now Andhra Pradesh)* [1961] (12 S.T.C. 31) and *A. M. Mohammed Isak v. The State of Madras* [1955] (6 S.T.C. 230) referred to. T.R.C. No. 98 of 1957 (unreported) distinguished.—*RAMAKRISHNA RICE WORKING COMPANY v. THE STATE OF ANDHRA PRADESH* [1962] 13 S.T.C. 755 (A.P.).

—*Explanation sales—Scope of Article 286(1)(a), (1)(b) and (2)—“Actual delivery”, “consumption”—Meanings of.*—Before a sale can be considered as an “inside sale” under the Explanation to Article 286(1)(a) of the Constitution, actual delivery to the purchaser or his agent should have taken place inside the taxing State. (ii) A delivery to the common carrier as such is not “actual delivery” within the contemplation of the Explanation. (iii) The Explanation can apply only if more than one State is involved in the same transaction. Where there is no other State in which the goods are said to have been consumed apart from the State where the property in the goods passed, the Explanation is not needed as the key; the power to tax in those circumstances is exercisable by virtue of transfer of title to the property. (iv) Where the property in the goods passed within a State as a direct result of the sale the sale transaction is not outside the State for the purpose of Article 286(1)(a) unless the Explanation operates. (v) The expression “consumption” in the Explanation is not used to denote destruction or user as understood in ordinary parlance; it is used as a term in economics, comprehending the diverse use of the goods in question. The distribution of the goods as in the case of re-sale is also consumption. (vi) Sale or purchase for

the purpose of export or for the purpose of inter-State trade is not a sale or purchase in the course of export or import or in the course of inter-State trade. (vii) Sales in the course of export or in the course of inter-State trade must of necessity be put through by transporting the goods by rail or ship or other means of communication. In order to claim the exemption under Article 286(1)(b) or (2) the sale or purchase must occasion the export or the inter-State sale. The sale or purchase must inextricably be bound up with the export or import or with inter-State trade or commerce and must form an integral part thereof.—*KHAITAN MINERALS v. SALES TAX APPELLATE TRIBUNAL FOR MYSORE AT BANGALORE* [1962] 13 S.T.C. 508 (Mys.).

—*Explanation sales—Actual delivery—Sale of timber—Delivery of timber “f.o.r. railway station” within State and subsequent transport of timber by rail outside State—Where actual delivery takes place.*—For the purposes of determining whether under Article 286(1) of the Constitution as it stood before the Constitution (Sixth Amendment) Act, 1956, a sale is “inside” or “outside” the State, it is the passing of property within the State that is intended to be fastened on and, therefore, subject to the operation of the Explanation to Article 286(1) that State in which the property passed would be the only State which would have the power to levy a tax on the sale. Where the Explanation applies, the sale transaction is by legal fiction deemed to have taken place “inside” the State of delivery and, therefore, “outside” the State in which the property has passed. Section 39(1) of the Sale of Goods Act, 1939, applies only when the seller is required to send the goods to the buyer in pursuance of a contract of sale. Where parties to a sale transaction agree between themselves that the seller should deliver the goods to the buyer F.O.R. the place of despatch, the effect of the arrangement is to rule out the operation of section 39 of the Sale of Goods Act. If in a contract of sale, the place of delivery is fixed as “F.O.R. the place of despatch”, then the goods are actually delivered to the buyer at that place within the meaning of the Explanation to Article 286(1)(a) of the Constitution and there cannot be again a “delivery” of the goods to the buyer at any other place merely because they are subsequently transported by the railway according to the instructions given by the parties. The assessee entered into a contract of sale of timber with the Director-General of Stores, Supplies and Disposals, Government of India. Under the contract, the place of delivery was “F.O.R.” a railway station within the State

of Madhya Pradesh. The assessee kept the timber logs ready for inspection at that place. The inspecting authority inspected the timber, issued an inspection certificate and put a mark on the approved timber. The assessee despatched the timber by goods train to places outside the State, obtained the railway receipt in the name of the consignee, sent the receipt by registered post and received ninety per cent. of the price. The balance of ten per cent. was received by the assessee on receipt of the consignment in good condition by the consignee, who had a right to re-inspection at the place of destination: *Held*, that the actual delivery of timber was within the State of Madhya Pradesh and the property in the goods also passed to the purchaser within that State. Therefore the State of Madhya Pradesh had the power to levy sales tax on the sale transaction. *Capco Limited v. Sales Tax Officer, Kanpur, and Another* [1960] 11 S.T.C. 34 dissented from.—C. P. *TIMBER WORKS v. COMMISSIONER OF SALES TAX, M.P., INDORE AND OTHERS* [1964] 15 S.T.C. 602 (M.P.). Affirmed in [1967] 20 S.T.C. 335 (S.C.). See page 358 *supra*.

—*States Re-organisation—State of Andhra Pradesh—Preservation of pre-existing sales tax laws in Telengana and Andhra areas—Transactions of sale involving movement of goods from one area to another—Whether inter-State sales.*—After the formation of the State of Andhra Pradesh, the Hyderabad General Sales Tax Act, 1950, continued to be operative in the Telengana area and the Madras General Sales Tax Act, 1939, in the rest of the territory comprised within that State. The question arose whether the transactions of sale involving the movement of goods from the Telengana area into the Andhra area could be deemed to be inter-State sales within the meaning of Article 286 of the Constitution: *Held*, that the movement of goods across a State border is the very essence of inter-State trade and commerce and the preservation of pre-existing sales tax laws by reason of section 119 of the States Re-organisation Act, 1956, had not the effect of constituting the movement of goods from one area of the State into another area an inter-State transaction. The territory of the State of Andhra Pradesh being one, the transactions of sale were intra-State sales and not inter-State sales.—*MUKUNDAS v. STATE OF ANDHRA PRADESH* [1960] 11 S.T.C. 420 (A.P.).

—See also cases at pages 195 to 205 *supra*.

—*Purchase of raw hides and skins in Andhra Pradesh State for tanning in Madras State—Tanning, whether consumption within Explanation to Article 286(1)(a)—Whether purchase tax is leviable—Whether sale occasions movement of goods*

and falls under section 3(a), Central Sales Tax Act, 1956.—The petitioner, a skin merchant having his head office in Madras State and a branch in Hyderabad in the Andhra Pradesh State, purchased in Hyderabad raw hides and skins through his branch and sent them to the head office for the purpose of tanning. In another case, the petitioner's purchasing agent in the Andhra Pradesh State purchased the raw hides and skins and sent them to the petitioner in the Madras State for tanning: *Held*, (1) that the conversion of raw hides and skins into tanned hides and skins is consumption within the meaning of the Explanation to Article 286(1)(a) of the Constitution; (2) that the purchase of raw hides and skins by the petitioner took place in Hyderabad and therefore the petitioner was liable to pay purchase tax under section 6 read with item 6 of Schedule IV of the Andhra Pradesh General Sales Tax Act, 1957; (3) that the sale did not occasion the movement of goods from the State of Andhra Pradesh to the State of Madras and they did not come under section 3(a) of the Central Sales Tax Act, 1956.—*SHAFEEQ SHAMEEM AND CO. AND ANOTHER v. THE STATE OF ANDHRA PRADESH AND OTHERS* [1964] 15 S.T.C. 828 (A. P.).

—“*State*” in Article 286—*Whether includes Part C States.*—In the context relating to the subject-matter of Article 286 of the Constitution the word “State” used therein must be read “otherwise than” as limited by Article 264(b). Therefore Article 286 applied to Part C States also and no sales tax could be levied on sale of goods delivered at places outside the former State of Vindhya Pradesh as a direct result of the sale for the purpose of consumption in those places.—*COMMISSIONER OF SALES TAX, MADHYA PRADESH v. MOHAMMED HUSSAIN RAHIM BUX* [1964] 15 S.T.C. 841 (M. P.).

—*When a sale can be said to be an inter-State sale—Transport of goods from one State to another not under any contract of sale—Whether sales liable to be taxed—Effect of Sales Tax Laws Validation Act, 1956.*

—A sale cannot be said to be an inter-State sale unless there is movement of goods from one State to another under the contract of sale. It is however not enough that the buyer takes delivery of the goods from the seller for the purpose of despatching them to another State nor is it enough that the seller pursuant to the instructions of the buyer despatches the goods across the border to another State. The contract of sale must itself provide as an integral part of it that the goods shall be transported from one State to another and in such a case it would not be relevant to inquire where the property passes.

The property may pass within the State which seeks to tax the sale, but the sale would nevertheless be an inter-State sale and, therefore, beyond the taxing power of the State. The assessee carrying on the business of manufacture and sale of cloth entered into contracts of sale of cloth with local buyers irrespective of the fact whether the buyers had received any indents from upcountry merchants. The buyers thereafter either took delivery of the cloth at their godowns or gave instructions to the assessee to despatch cloth to such destinations as they required in which case the assessee despatched cloth to such destinations by rail according to the instructions of the buyers. The assessee also made the necessary applications to the Textile Commissioner for permission to despatch the same. The assessee took out the railway receipts in its own name as consignor as well as consignee and endorsed the railway receipts in favour of the buyers and delivered the same to the buyers in performance of the contracts. It was after the railway receipts duly endorsed were handed over by the assessee to the buyers that the buyers made payment of the price to the assessee. In assessing the assessee for the period 1st April, 1953, to 31st March, 1954, the assessee claimed that the sales in which the cloth had been despatched by the assessee to destinations outside the State of Bombay were inter-State sales and not liable to be taxed: *Held*, that it could not be said that it was an integral part of the contracts of sale that the goods should be transported from the State of Bombay to another State or that the movement of the goods from the State of Bombay to another State was a necessary incident of performance of the contracts of sale. Therefore the sales were not sales in the course of inter-State trade or commerce and were liable to be taxed. *Obiter*:—Even if they were inter-State sales they were liable to be taxed by reason of the enactment of the Sales Tax Laws Validation Act, 1956.—**THE BHARAT-KHAND TEXTILE MFG. CO. LTD. v. THE STATE OF GUJARAT** [1964] 15 S.T.C. 885 (Guj.).

—*Contract should provide for delivery outside State—Mere transportation of goods outside State by buyer not sufficient to entitle exemption.*—A contract for sale of goods may be exempted from the payment of sales tax in cases governed by the Constitution prior to its amendment by the Constitution (Sixth Amendment) Act, 1956, if it is a sale falling under the Explanation to Article 286(1)(a). In order to be such a sale, it has to be found as a fact that the goods under the contract were to be delivered in another State for consumption in that State. The contract

itself must provide for this liability on the part of the seller. Even if the intention is clear that the purchaser would buy and then transport it outside the State, that would not be sufficient. Under a contract of sale, the place of delivery was Calcutta, inspection of the goods was at Calcutta and payment was also made at Calcutta. The contract however contained expressions indicating that the goods were intended for use outside the State of West Bengal and they would eventually be despatched to places outside the State: *Held*, that the sale was completed within the State of West Bengal and therefore it was subject to the payment of sales tax and was not within any exemption either under the Bengal Finance (Sales Tax) Act, 1941, or under Article 286 of the Constitution.—**JEEWANLAL (1929) LTD. v. COMMERCIAL TAX OFFICER AND OTHERS** [1965] 16 S.T.C. 478 (Cal.).

—*Explanation sale—Actual delivery, meaning of—Goods sent by rail in the name of purchaser or agent—Effect.*—Where goods were sent under railway receipts to places outside State A and actually delivered, for the purpose of consumption, in those States, State A has no authority to levy tax in respect of such sale transaction by virtue of the Explanation to Article 286(1)(a) of the Constitution. Whether the consignment was sent in the name of the seller or in the name of the purchaser or his agent, if the despatch work was undertaken and executed by the seller and the goods were never delivered in the physical sense to the purchaser within State A, the Explanation to Article 286(1)(a) would apply and such sale cannot be subjected to sales tax by State A.—**HIRJI KALYANJI WADERA v. THE STATE OF MAHARASHTRA** [1965] 16 S.T.C. 502 (Bom.).

—*Explanation sales—Press notes—Sales Tax Laws Validation Act, 1956—Effect of press notes issued by State Government prior to and after decision in Bengal Immunity case.*—When there is a gazette notification made by the State Government, the Court must look into the substance of that notification and not merely the form. Whatever may be the description given in that notification, if in substance it appears to be an order passed in exercise of a statutory power, full effect must be given to it even though the notification does not purport to have been issued in exercise of any statutory power. The power of exemption under section 7 of the Orissa Sales Tax Act, 1947, can be used only where, but for the order of exemption, the dealer would be liable to pay sales tax. On the other hand, if, under the law as it stood on a particular day, a dealer was not liable to pay sales tax, Government could not issue an exemption order under

section 7 in respect of that dealer. The petitioner, a non-resident dealer, was assessed to sales tax on 4th December, 1956, in respect of sales falling under the Explanation to Article 286(1)(a) of the Constitution for seven quarters commencing with 1st October, 1953, and ending on 30th June, 1955. The petitioner had paid the tax due for these quarters long before the date of assessment. After the decision of the Supreme Court in the *United Motors* case [1953] (4 S.T.C. 133) the State Government issued a press note on 5th June, 1954, stating that sales tax would be levied on Explanation sales effected on or after 1st April, 1953. When the Supreme Court in the *Bengal Immunity* case [1955] (6 S.T.C. 446) reversed its judgment in the *United Motors* case and held that such sales were not taxable, the State Government issued a second press note on 2nd November, 1955, by which they immediately suspended the levy of sales tax on such sales. On 2nd March, 1956, Parliament passed the Sales Tax Laws Validation Act, 1956, by which the effect of the judgment of the Supreme Court in the *Bengal Immunity* case was taken away in respect of Explanation sales which took place between 1st April, 1951, and 6th September, 1955, and the levy and collection of sales tax on such sales was also validated. The State Government then issued a third press note dated 31st December, 1956, by which it revoked the press note issued on 2nd November, 1955, and further directed that all proceedings for assessment and collection of sales tax in respect of such sales transacted between 1st April, 1953, and 6th September, 1955, should be taken up and completed. It was also directed that if a dealer could prove that he did not collect sales tax no tax could be levied in respect of such sales, but taxes already deposited with or collected by the Government would not be refunded: *Held*, (1) that as regards Explanation sales which took place prior to 1st April, 1953, the press note issued on 5th June, 1954, was in the nature of a statutory exemption under section 7 of the Act; (2) that the press note dated 2nd November, 1955, was only an administrative order on the date of its issue and it could not subsequently become a statutory order under section 7, merely because the Validation Act was passed by Parliament subsequent to the issue of that order; (3) that the press notes dated 2nd November, 1955, and 31st December, 1956, could not be deemed to have been issued under section 7 and as such they had no statutory force. They were binding on the Government administratively but they could not exempt the legal liability to pay tax in view of the Validation

Act; (4) that the press notes did not in any way affect the validity of the assessment orders made after the coming into force of the Validation Act and that the petitioner was not entitled to the refund as the tax was lawfully payable; (5) that the assessment for the quarter ending 31st December, 1953, was not barred by limitation as it was made within thirty-six months.—*WILLIAM JACKS & CO. LTD. v. THE STATE OF ORISSA* [1965] 16 S.T.C. 693 (Orissa).

—*Explanation sale—Actual delivery, meaning of—Scope of Explanation to Article 286(1)(a), Constitution of India—Purchaser taking delivery of goods within State and transporting them across border to another State—Where sale takes place.*—The Explanation to Art. 286(1)(a) of the Constitution laid down that a sale took place in another State only if actual delivery took place in the other State for consumption there. Unless both the conditions, namely, actual delivery in the other State and consumption in the other State, were actually satisfied, it could not be said that the sale took place outside the State, *i.e.*, in another State. The onus lay upon the dealer to show that the sale that was taxed by the State had taken place in another State and he could discharge the onus only by showing that the actual delivery took place in another State and that the goods were to be consumed in that State. If he failed to show the existence of either of the two conditions he failed to show that the State had no power to tax the sale or that the tax was invalid. If a purchaser takes delivery of the goods within the State it cannot be said that he takes delivery outside the State merely because after the delivery he transports the goods across the border to another State. A finding that the delivery took place outside the State merely because the goods were transported from the State to another State is not correct. A further fact has to be found that the transporting has been done by the assessee's agents and not by the purchaser's agents. Actual delivery means actual delivery of the goods sold, whether to the purchaser himself or to his agent or servant, as distinguished from constructive delivery of the goods to the purchaser or his agent or servant through a receipt or other title deed. Once it is found that actual delivery did not take place in another State, the question whether the goods were to be consumed in another State becomes redundant.—*COMMISSIONER OF SALES TAX, U.P., LUCKNOW v. UPPER DOAB SUGAR MILLS LTD.* [1966] 17 S.T.C. 19 (All.).

—Where under a contract of sale, there is a transport of goods from outside a State into the

territory of the State, and the contract itself involves the movement of goods across the border, the transaction is stamped with the character of an inter-State sale.—**TUNGABHADRA INDUSTRIES LTD. v. THE STATE OF ANDHRA PRADESH** [1966] 17 S.T.C. 366 (A.P.) (F.B.).

—*Coal supplied to railways and other buyers outside taxing State pursuant to directions of Coal Controller under Colliery Control Order, 1945—Sales, whether inter-State sales or outside State sales—Liability to tax.*—The assessee carried on the business of mining coal from their collieries and supplying it to consumers in and outside the State of Madhya Pradesh. They were “registered dealers” under the C.P. and Berar Sales Tax Act, 1947, and the M.P. General Sales Tax Act, 1958. At all material times, coal was a controlled commodity, the sale, distribution and movement of which were regulated and controlled by the Coal Controller and various other authorities empowered in that behalf under the Colliery Control Order, 1945. During the assessment periods falling within the years 1st January, 1953, to 31st March, 1961, the assessee despatched coal to the various Railway Administrations at various destinations outside the State of Madhya Pradesh in compliance with the directions issued by the Ministry of Production, Government of India, under clauses 8 and 9 of the Order. They also despatched coal to other buyers outside the State under the directions of the Coal Controller, Government of India, exercising powers under the Order. The taxing authorities treated all these despatches as sales and assessed them to tax under the local enactments. The assessee preferred appeals against the orders of assessment, but these appeals were not admitted as they had not deposited one-third amount of the tax assessed. The assessee thereupon filed petitions under Articles 226 and 227 of the Constitution to quash the assessment orders and for consequential reliefs: *Held*, (1) that the cases were fully governed by the judgment of the Supreme Court in *Singareni Collieries Co. Ltd. v. The State of Andhra Pradesh* [1966] (17 S.T.C. 197) and therefore the levy of sales tax under the C.P. and Berar Sales Tax Act, 1947, and the M.P. General Sales Tax Act, 1958, on the assessee on the price of coal supplied by them to allottees outside the State of Madhya Pradesh in respect of the periods of assessment falling within the years 1st January, 1953, to 31st March, 1961, could not be sustained on any ground; (2) that as the levy of sales tax on the assessee was manifestly without jurisdiction and illegal, it would not be right to compel them to pursue the appeals they had filed for having the assessments made against

them quashed. A railway owned or controlled by Government is as much a “carrier” as is a railway company engaged in the business of carrying goods of all persons. This position of a government-owned or controlled railway is in no way altered when goods belonging to Government or intended for Government are entrusted to it for transport. It could not therefore be said that coal was actually delivered to the Railway Administration at the base station. (i) For the period from 1st January, 1953, to 6th September, 1955 [during which, under the Sales Tax Laws Validation Act, 1956, the ban contained in Article 286(2), as it stood originally, did not operate], sales tax on coal delivered to allottees outside the State of Madhya Pradesh and for delivery for consumption in the outside State was not leviable by virtue of the Explanation to Article 286(1), as it stood before it was deleted by the Constitution (Sixth Amendment) Act, 1956, which came into force on 11th September, 1956. (ii) During the period from 7th September, 1955, to 10th September, 1956, the transactions were not taxable both because they were covered by the Explanation to Article 286(1) and because they were also inter-State sales. In this period the ban contained in Article 286(2) again became operative as the Sales Tax Laws Validation Act, 1956, was not extended to cover that period, and, therefore, the State had no power to levy tax on inter-State sales. (iii) During the period from 11th September, 1956, to 4th January, 1957, after the coming into force of the Constitution (Sixth Amendment) Act, 1956, but prior to the coming into force of the Central Sales Tax Act, 1956, there was no power in the State to tax inter-State sales and therefore no sales tax could be imposed on the assessee for despatches of coal outside the State. (iv) For the period from 5th January, 1957, when the Central Sales Tax Act, 1956, came into force, and onwards, the State had no power at all to tax under the local Acts transactions of coal despatches by the assessee outside the State inasmuch as such sales fell under section 3(a) of the Central Sales Tax Act, 1956, and were therefore assessable to tax under that Act.—**THE AMALGAMATED COALFIELDS LIMITED v. THE STATE OF MADHYA PRADESH** [1966] 18 S.T.C. 251 (M.P.).

—*Supply of beer by manufacturer outside State to sub-distributor within State under instructions from sold distributor within State—Excise permits taken in the name of sub-distributor and supplies made direct to sub-distributor—Whether sale by sub-distributor to customer first sale within State.*—In order that a sale may be an inter-State sale, the movement of the goods from one State to another must have

been occasioned on account of the sale. If under a contract of sale, movement of goods from one State to another is contemplated or if such movement is an incident of that contract, then the sale is an inter-State sale. The petitioner-company having a branch at Ernakulam, Kerala State, was a registered dealer selling beer. M Company, Shertallai, Kerala State, was appointed sole distributor for that State in respect of certain beer manufactured by the U.B. Ltd., Bangalore, Mysore State. The sole distributor sold beer to the petitioner who had been appointed as the sole sub-distributor for Kerala under an agreement. It was stipulated in the agreement that all supplies of beer to the petitioner would be effected at its Ernakulam branch by the Shertallai branch of the sole distributor and the payments for such supplies would be made by the former to the latter by depositing the respective amounts in the latter's account with the bank specified. It was agreed between the parties that the goods would be taken direct to Ernakulam from Bangalore, that for that purpose the excise permits were to be taken by the petitioner in its name after paying the duty, that the petitioner would forward the indents to the sole distributor along with the duty-paid transport permits and that the sole distributor would then place orders with the manufacturers with instructions to despatch the consignments to Ernakulam direct on the sole distributor's account. Invoices of all supplies of beer made to the petitioner were made by the sole distributor on the petitioner and were forwarded from Shertallai to Ernakulam. The goods were despatched by the manufacturers to Ernakulam either through their own lorries or through public carriers and were taken delivery of by the petitioner at Ernakulam for and on behalf of the sole distributor and the goods were held as stock of the sole distributor until the concerned invoices were received from the sole distributor. The Sales Tax Authorities held that the sales by the petitioner to its customers were the first sales in the State and therefore the petitioner was liable to be taxed: *Held*, that it could not be said that there was any contract of sale between the manufacturers and the petitioner. The movement of goods from Bangalore to Ernakulam had been occasioned by the sales by the manufacturers to the sole distributor. The property in the goods passed to the sole distributor, Shertallai, when the goods were unconditionally appropriated by the manufacturers in Bangalore, and to the petitioner from the sole distributor, Shertallai, after the goods reached Ernakulam and after the invoices were received from the sole distributor by the

petitioner. The sales by the manufacturers to the sole distributor, Shertallai, were inter-State sales and the sales by the sole distributor to the petitioner were the first sales in the State and therefore the sales by the petitioner to its customers were not first sales in the State and were not liable to be taxed. The provisions of rule 32(13) of the Kerala General Sales Tax Rules, 1963, are not mandatory.—*PHIPSON & Co. LTD., ERNAKULAM v. SALES TAX OFFICER, SPECIAL CIRCLE, ERNAKULAM* [1967] 19 S.T.C. 200 (Ker.).

—*Explanation sale—Conditions for applicability of Explanation—Burden of proof.*—The burden of proving the conditions for the applicability of the Explanation to Article 286(1)(a) of the Constitution is on the assessee. Where an assessee only proved that the goods were actually delivered outside the State of Madhya Pradesh as a direct result of the sale transaction, but not the further requirement that the goods so delivered were for the purpose of consumption in the State of delivery, he was not entitled to the exemption under the Explanation to Article 286(1)(a). From the mere fact that the goods were actually delivered outside the State of Madhya Pradesh as a direct result of the sale transaction, it cannot be inferred that the goods were delivered for the purpose of consumption in the State of delivery. So to hold would be to nullify altogether the requirement of the Explanation that the delivery of the goods must be for the purpose of consumption in the State of delivery.—*GANPAT PANNALAL OF HARDA v. COMMISSIONER OF SALES TAX, MADHYA PRADESH* [1967] 19 S.T.C. 384 (M.P.).

—*Contract with Government for forming embankment for dam—Government obtaining petrol and diesel oil from Madras State and supplying them to contractors at workshop compound of Government in Kerala State—Whether sale by Government to contractor inter-State sale or first sale liable to tax under Kerala Act.*—The petitioner-firm entered into a contract with the Government for forming embankment for a dam. A clause in the special conditions of agreement entered into by the petitioner provided that if the petitioner required petrol or high speed diesel oil the same could be supplied from the pump installed in the departmental workshop compound and the cost of the same would be recovered in cash at certain rates. For supplying petrol and diesel oil to the contractors in the irrigation project and for other purposes the Government purchased petrol and diesel oil from the Burma Oil Company at Pollachi in the Madras State, who delivered the same in the pump installed in the workshop compound at

Pothundi in the Kerala State from where the department regularly supplied petrol and diesel oil to contractors including the petitioner realising the price thereof from them. The question was whether the sales to the petitioner were inter-State sales not liable to tax under the State law or whether they were liable to tax under the State law as first sales of petrol and diesel oil: *Held*, (1) that the fact that the Government purchased petrol and diesel oil from Pollachi and transported the same to Pothundi with the idea of supplying petrol and diesel oil to contractors including the petitioner would not make the movement of goods across the border, a movement under a contract with the petitioner. The Government entered into a contract of sale with the Pollachi dealer and under that contract the movement of goods took place and therefore the inter-State sales were the sales to the Government by the Pollachi dealer and not the sales by the Government to the petitioner; (2) that the Government were a "dealer" within the definition of that word in section 2(viii) of the Kerala General Sales Tax Act, 1963, and therefore the sales by the Government to the petitioner were the first sales which would attract liability to sales tax under the State Act.—*NECHUPADAM CONSTRUCTION ENGINEERING CONTRACTORS v. THE EXECUTIVE ENGINEER, POTHUNDI, AND ANOTHER* [1967] 20 S.T.C. 82 (Ker.).

—"*Occasions the movement of goods*", meaning of —*Contract of sale must contemplate movement of goods—Mere transportation of goods outside State by buyer is not sufficient.*—A sale or purchase "occasions the movement of goods" within the meaning of section 3(a) of the Central Sales Tax Act, 1956, either when the contract for such sale or purchase itself contemplates or necessarily involves the movement. In other words, the movement must occur under the contract. When the movement is not under the contract but due to reasons extraneous to the obligations under the contract, it cannot be said to be a movement in the course of inter-State trade or commerce. The assessee, a limited company with its registered office in Calcutta and manufacturing aluminium utensils, entered into a contract of sale with the Government of India under which goods were delivered in West Bengal, the price was paid in West Bengal and the property in the goods also passed to the Government in West Bengal. The goods were, however, transported from West Bengal to a place outside that State by or on behalf of the Government with which the assessee had nothing to do: *Held*, that the transactions were not in

the course of inter-State trade or commerce and were subject to payment of sales tax under the Bengal Finance (Sales Tax) Act, 1941. Decision of *SINHA, J.*, in *Jeewanlal (1929) Ltd. v. Commercial Tax Officer and Others* [1965] (16 S.T.C. 478) affirmed.—*JEEWANLAL (1929) LTD. v. COMMERCIAL TAX OFFICER, LYONS RANGE CHARGE, AND OTHERS* [1967] 20 S.T.C. 345 (Cal.).

—*Place of delivery—Parties residing outside State—Price stipulated F.O.R. Khandwa—Whether transactions inside sales*—The expression "F.O.R.", when used in connection with the place of delivery, means that the delivery *prima facie* takes place when the goods are put on rail, and when the expression is used in connection with the price, then the rate is inclusive of all charges of putting the goods on rail. The assessee engaged in the business of manufacturing and selling oil entered into sale transactions with parties residing outside the State of Madhya Pradesh on the basis of price stipulated F.O.R. Khandwa. The Board of Revenue based its conclusion that the sales were inside sales solely on the circumstance that the place of delivery was F.O.R. Khandwa: *Held*, that if the stipulated price was F.O.R. Khandwa and the F.O.R. condition was not for delivery of oil at Khandwa, then the sales could not be said to be inside sales solely on the circumstance that the place of delivery of oil was F.O.R. Khandwa. *Bengal Timber Trading Co. Ltd. v. Commissioner of Sales Tax* [1967] (19 S.T.C. 366) relied on.—*MANSINGH-KA OIL MILLS LTD. v. COMMISSIONER OF SALES TAX, MADHYA PRADESH, INDORE* [1968] 22 S.T.C. 503 (M. P.).

—*Goods sent by rail outside State and actually delivered outside State—Endorsement of railway receipts to buyer within State—Sales, whether inter-State sales.*—Where goods were sent by rail to places outside the State of Andhra Pradesh and were actually delivered outside the State for the purpose of consumption in those States, the sales were inter-State sales, and the State of Andhra Pradesh has no authority to levy sales tax in respect of those sale transactions. The mere fact that the railway receipts were endorsed in the name of the buyer in the State is not material. *Shree Bajarang Jute Mills Ltd., Guntur v. The State of Andhra Pradesh* [1964] (15 S.T.C. 430) followed. *Sri Ramakrishna Commercial Society Ltd. v. The State of Andhra (Now Andhra Pradesh)* [1961] (12 S.T.C. 31) referred to.—*LAKSHMI GANESH RICE MILL v. BOARD OF REVENUE (C.T.)*, ANDHRA PRADESH, HYDERABAD [1968] 22 S.T.C. 506 (A.P.).

The decisions of the High Courts prior to the decision of the Supreme Court in *THE BENGAL*

IMMUNITY Co.'s case [1955] 6 S.T.C. 446 are given below :—

—The words “in the course of export” in Article 286(1)(b) cannot bear the same meaning as “for the purpose of export”. The object of Article 286(2) is to prevent the States from interfering with the free flow of commerce in the country by erecting barriers of taxation. The words “sale of goods where it takes place in the course of inter-State trade” limit the prohibition on the power of the States to impose tax on sales only where they are the subject-matter of inter-State commerce. The power of the States to tax sales before the inter-State commerce commences and after it ends is left untouched. The States therefore enjoy full powers of taxation so long as they do not trespass into the region of inter-State commerce and that region begins when the goods commence their inter-State journey and ends when they reach their destination. Under Article 286(1)(b) the prohibition on the power of the State to tax exports and imports is stated in precisely the same terms as in relation to inter-State commerce under Article 286(2); and that is only in respect of sales or purchases which take place in the course of the import or the export of the goods. It would be in accordance with sound rules of construction to put the same meaning on the words “in the course of” occurring both in Article 286(1)(b) and in Article 286(2). Thus understood the prohibition under Article 286(1)(b) will begin to operate only from the time when the goods exported begin their international journey and it will cease when that journey ceases. In other words, the prohibition is limited to the period covered by the actual exportation or importation of the goods. The power of the State to impose tax at any stage before or after is not affected. Both in Article 286(1)(b) and in Article 286(2) the power of the State to impose a tax on export or import or inter-State trade or commerce is taken away only in respect of sales or purchases made directly in relation to the goods which are the subject-matter of transportation either in inter-State or international commerce, whether such sales take place prior to the commencement of the transport or during its progress. The prohibition does not extend to sales or purchases which have no direct connection with the goods which are exported. Unless goods are in transit under a contract between two persons in two different countries entered into either at the commencement of the transport or during its progress, there can be no question of a sale or purchase in the course of import. Transport by the petitioners of hides and skins after purchase had been completed in Pakistan could not be brought under Article 286(1)(b) as a purchase in the course of import. Such a

transaction would also be outside the operation of the Madras General Sales Tax Act as the Act authorises a levy of tax only on sales or purchases within the State of Madras. Sales tax can be levied on sales which are of an inter-State character, provided they are substantially effected within the State and a law imposing such a tax is not *ultra vires* the Legislature. The right to impose sales tax arises when the contract of sale is concluded, provided the contract is completed by the passing of property. The right however does not depend on the passing of property within the State. *Poppallal Shah v. The State of Madras* [1952] (3 S.T.C. 396) followed. A State has plenary powers of taxation over intra-State sales. It has no power to impose a tax on extra-State sales. In respect of inter-State sales, the State in which the contract is concluded is the only State which has the power to impose a tax. Where goods are delivered for consumption in a particular State that State has, under Explanation to Article 286(1)(a) of the Constitution of India, the power to impose a use tax or a purchase tax thereon notwithstanding that the transaction of sale is extra-State. The Madras General Sales Tax (Turnover and Assessment) Rules which were framed before the Constitution cannot be declared void on the ground that they have mixed up what would not now be taxable with what is taxable. If the assessment is to any extent not authorised by the Statute, the assessee is entitled to be relieved from the imposition to that extent. They cannot claim further that they should be freed altogether from liability even to the extent that they are liable under the Act.—*C. GOVINDARAJULU NAIDU & Co. v. STATE OF MADRAS AND ANOTHER* [1952] 3 S.T.C. 405 (Mad.).

—See also *THE BENGAL IMMUNITY CO., LTD. v. STATE OF BIHAR AND OTHERS* [1953] 4 S.T.C. 43 (Pat.) at page 127 *supra*.

—The Constitution of India, 1950, prohibits the taxation of goods when the sale or the purchase takes place outside the State and makes the delivery of the goods for consumption the decisive factor in determining which State is to have the right of taxing such sales. There is nothing special in the use of the words “sale or purchase”. The tax may take the shape of a sales tax or a purchase tax. If A, the producer of goods in Madhya Pradesh, were to contract with B, a person residing in the Bombay Presidency, for the sale of certain goods, the goods to be ultimately delivered to C in Madras for consumption, the right to levy the sales tax would belong to the Madras State and not the other two States. If it were not so, the transaction is liable to be taxed three times by the three States concerned. In *Freeman v. Hewit* (329 U.S. 256)

certain suggestion for preventing multiple taxation were made and the present provision in the Constitution adopts the second suggestion.—*SHRIRAM GULABDAS v. BOARD OF REVENUE, MADHYA PRADESH* [1952] 3 S.T.C. 343 (Nag.).

—*Scope of Article 286.*—Article 286 puts various restrictions upon the competence of the State Legislature to impose tax on the sale or purchase of goods. The first restriction is that it cannot tax a sale or purchase which takes place outside the State. It cannot tax a sale or purchase where goods are delivered for consumption outside the State. Further, it cannot tax sales or purchases, even though they may be inside the State, if the sales or purchases are in the course of the import of the goods into, or export of the goods out of, the territory of India. Finally, it cannot tax sales or purchases, even though they may have taken place inside the State, if the sales or purchases are in the course of inter-State trade or commerce. The contention that under Article 286(1) a sale takes place where the property in the goods passes cannot be accepted. “Sale” has been used in Article 286(1) in the sense of transaction of sale and what is emphasised by Article 286(1) is not the aspect of passing of property but the aspect of the transaction of sale which consists of various ingredients, and having given the power to the Legislature under entry 54 to tax a sale which takes place within the State, the Constitution emphasises the disability from which the Legislature suffers and the disability is that it cannot tax a sale or a transaction of sale which takes place outside the State.—*UNITED MOTORS (INDIA) LTD. AND OTHERS v. THE STATE OF BOMBAY AND ANOTHER* [1953] 4 S.T.C. 10 (Bom.). For the decision of the Supreme Court on appeal see page 346 *supra*.

—*Explanation to Article 286(1).*—The Explanation to Article 286(1) creates a legal fiction or raises a statutory presumption with regard to the meaning and scope of the expression “outside the State” used in Article 286(1). The Explanation by stating what is inside the State by necessary implication states what is outside the State. If the sale takes place inside that State in which the goods have actually been delivered as a result of such sale for the purpose of consumption in that State, then it must follow as an inevitable corollary that it is a sale outside the State for the purposes of the State in which the property has passed. Further, the Explanation refers to one particular transaction and that is the transaction of sale for consumption, and what the Explanation points out is that that transaction can only be taxed where goods are delivered. It is only

in the State in which the goods are delivered that the sale is within the State. For all other States it is sale outside the State.—*UNITED MOTORS (INDIA) LTD. AND OTHERS v. THE STATE OF BOMBAY AND ANOTHER* [1953] 4 S.T.C. 10 (Bom.). For the decision of the Supreme Court on appeal see page 346 *supra*.

—If sales are outside a State so as to bring the case within the ambit of clause (a) of Article 286(1) or even if the sales are not outside the State but within, nevertheless for the purpose of consumption in another State in India so as to bring the case within the ambit of the Explanation to Article 286(1), the sales would be immune from assessment to sales tax.—*A. V. GEORGE & CO., LTD. v. SALES TAX OFFICER AND ANOTHER* [1953] 4 S.T.C. 323 (Trav.-Co.).

—The petitioner, carrying on its business in Orissa, collected coconuts from various persons in Orissa and sold them to several dealers in Raipur (Madhya Pradesh) and Manbhum (Bihar). On receipt of orders from the purchasing firms, the petitioner indented for railway wagons, loaded them with coconuts and booked them by rail to Raipur and Manbhum and sent the railway receipts to the purchasing firms either through bank or by V.P.P. The purchasing firms obtained custody of the railway receipts on payment of the full price and transport charges and took delivery of the coconuts at the places of destination. No evidence was adduced by either side to show that the coconuts were actually consumed in Raipur or Manbhum. The petitioner claimed exemption from sales tax in respect of these transactions relying on Article 286(1)(a) of the Constitution. The Sales Tax Officer disallowed the claim on the ground that it was the petitioner's duty to prove that the goods were actually consumed in Raipur or in Manbhum and in the absence of any reliable evidence to that effect clause (1)(a) of Article 286 read with the Explanation to that clause would not apply and that the transactions of sale were liable to taxation in Orissa. The petitioner thereupon filed a petition under Article 226 of the Constitution of India: *Held*, that the State of Orissa had no power to tax the sales and it was unnecessary to consider whether the transactions were liable to taxation in Madhya Pradesh or Bihar. Where any transaction of sale involves inter-State elements only that State where the goods are actually delivered for the purpose of consumption would be entitled to tax that transaction. No other States will have that power. *State of Bombay v. United Motors (India) Ltd. and Others* [1953] 4 S.T.C. 133; A.I.R. 1953 S.C. 252) followed.—*SAKHIGOPAL COCONUT GROWERS CO-OPERATIVE*

SOCIETY v. THE STATE OF ORISSA AND ANOTHER [1953] 4 S.T.C. 372 (Ori.).

—It is not every inter-State sale that attracts to itself the provisions of the Explanation to Article 286(1)(a). With reference to inter-State sales effected in Madras, the Explanation could apply only to sales in which the goods have been actually delivered as a direct result of such sale for the purpose of consumption in a State other than Madras. That the delivery was the direct result of the sale, and further that the delivery of the goods was for the purpose of consumption in the State in which they were delivered have to be proved as facts. The turnover of an assessee for the year 1950-51 represented sales of goods to buyers outside the Madras State and the goods were sent to them out of Madras. The assessee contended that the sales came within the scope of the Explanation to Article 286(1)(a) and that the Sales Tax Continuance Order (C. O. No. 7 of 1950) made by the President under the proviso to Article 286(2) of the Constitution of India did not save the right of the Madras State to tax such sales up to 31st March, 1951: *Held*, that there was not material enough for the assessee to invoke the benefit of Article 286(1)(a) with the Explanation thereto and in that case, only Article 286(2) could apply and if it did, the proviso and the President's Order issued thereunder justified the levy of the tax by the State of Madras up to 31st March, 1951.—**THE EAST INDIA MATCH FACTORY v. THE STATE OF MADRAS** [1954] 5 S.T.C. 269 (Mad.).

—Whether the delivery of goods was as a direct result of the sale effected by the assessee for purposes of consumption in the State of delivery within the meaning of Article 286(1)(a) and the Explanation thereto is a question of fact which has to be proved by the assessee. In respect of a certain sum representing the estimated value of packing materials in which tobacco was consigned to purchasers outside the State of Madras the assessee claimed exemption under section 4 of the Madras General Sales Tax Act, rule 5(1)(g)(ii) of the Turnover and Assessment Rules, and Article 286(1)(a) with the Explanation thereto of the Constitution: *Held*, that the assessee was not entitled to the exemption. *East India Match Factory v. The State of Madras* [1954] (5 S.T.C. 269) followed.—**INDIAN LEAF TOBACCO DEVELOPMENT CO., LTD. v. THE STATE OF MADRAS (NOW ANDHRA)** [1954] 5 S.T.C. 354 (Mad.).

—By virtue of the Explanation to clause (1) of Article 286 of the Constitution of India where delivery of goods in pursuance of a sale or purchase takes place in a particular State for

consumption in that State, the sale has to be deemed to take place in that State and in no other State. Such a sale or purchase cannot be taxed by any other State except the State in which the sale is deemed to have taken place because of the actual delivery of goods for consumption in that State. Article 286(2) deals with another aspect. Under that clause, all sales in the course of inter-State trade or commerce are exempt from sales tax except to the extent that Parliament may by law otherwise provide. The limitation on the power of a State law to impose tax on sales or purchases taking place in the course of inter-State trade or commerce is a separate and distinct ban on imposition of tax apart from the ban imposed by clause (1)(a) of that Article. A particular sale or purchase may not be liable to tax because of clause (1)(a) of Article 286 and this ban would operate even though there may be no such ban on taxing that sale or purchase under clause (2) of that Article. Similarly, there may be no ban on taxing a sale or purchase under clause (1)(a) of Article 286 but the ban may occur under clause (2) of that Article. If either of the two limitations placed by clause (1) or clause (2) of Article 286 comes into play, the State law cannot tax such a sale or purchase. Whenever any sale takes place in which the parties belong to two different States, it will have to be determined where the sale has taken place for purposes of imposing sales tax. The determination of the place of sale for purposes of the Indian Contract Act, or for determining the rights inter parties to the sale may depend on the provisions of the Sale of Goods Act, but when the liability of the sale or purchase to sales tax has to be considered, the place, where the sale takes place, must be determined in accordance with Article 286 after taking into account the Explanation appended to that clause. Even clause (1)(a) of Article 286 deals with cases of inter-State trade and commerce and places a ban on taxation by State law of sales or purchases by all States other than the State in which the goods are actually delivered for consumption in that State. If this ban of clause (1) comes into operation, the non-applicability of the ban under clause (2) of Article 286 becomes immaterial and the taxation of the sale by the State law must be held to be void. The only power which the President has been granted under the proviso to Article 286(2) is to pass an order, doing away with for a temporary period ending on the 31st March, 1951, the ban imposed by clause (2) of Article 286. No power has been granted to the President to dispense with the ban imposed by clause (1)(a) of Article 286. The Sales Tax Continuance Order,

1950, issued by the President deals only with the ban imposed by clause (2) of Article 286. Under Article 286 the ban is imposed on every "law of a State" without making a distinction whether that law existed at the commencement of the Constitution or has been passed since the Constitution came into force. Therefore the U.P. Sales Tax Act could continue in force in the State of Uttar Pradesh after the commencement of the Constitution only to the extent to which it did not contravene any of the provisions of the Constitution and the provision, which permits the State of Uttar Pradesh to tax sales which under clause (1)(a) of Article 286 of the Constitution, must be deemed to take place outside the State of Uttar Pradesh, has become void as a consequence. *State of Bombay v. United Motors (India) Ltd.* [1953] (4 S.T.C. 133; A.I.R. 1953 S.C. 252) explained.—KANPUR OIL MILLS, HARRISGANJ *v.* JUDGE (APPEALS) SALES TAX, KANPUR RANGE, KANPUR, AND OTHERS [1955] 6 S.T.C. 77 (All.).

—The actual delivery referred to in the Explanation to Article 286(1)(a) of the Constitution is a delivery by the seller to the buyer and not the delivery involved in a buyer's agent to whom goods have been delivered in the State transporting them across the border and handing them over to his principal. If under the terms of the contract between the parties, and as one of the stipulations therein, a delivery has taken place within the State, the Constitution does not envisage a fictitious or notional second delivery of the same goods outside the State affording a like exemption by reason merely of the goods being transported outside the State by the purchaser even though it be by a transaction which forms part of the very delivery to him. The assessee was a registered manufacturer of groundnut oil carrying on business in P in the Madras State. He sold oil to a company in E outside the Madras State. The course of business between the assessee and the buyers was as follows: The sale of oil was loose and buyers sent their own drums to the assessee for the carriage of the oil. These containers were checked up by the assessee and they were filled in at the assessee's mills. The drums were transported to P railway junction and then loaded on waggons by the assessee who obtained railway receipts in the name of the buyers as consignors, the consignees being the same. On the instructions of the buyers all the oil sold under the contracts were routed to E where they were cleared by the buyers and they used the commodity in their mills. The railway receipts with the relative invoices were handed over at C

in Madras State to the buyers, where they had an office and the sellers received a good portion of the price. The balance was paid after weights were checked and fatty acid tests were carried out by the buyers at E: *Held*, (1) that the purchase by the company was "for the purpose of consumption" in E, but that was not sufficient to attract the constitutional exemption which would be satisfied only when goods had *actually been delivered* outside the Madras State; (2) that although under the Explanation to Article 286(1)(a) the passing of property is immaterial for the purpose of judging whether a sale has taken place within the State or not, the crucial fact which has to be established before the exemption could be claimed is that there was an "actual delivery" of the goods outside the State. If under the contract there was a delivery of the goods at P, there could not be a delivery of the same goods again at E merely because the goods were subsequently transported to and reached E; (3) that in the present case the delivery of the goods at P railway junction was delivery to the buyer and the subsequent transportation of the goods from P to E was really on behalf of the buyer and therefore the goods had "actually been delivered to the buyer within the Madras State" within the meaning of the Explanation to Article 286(1)(a) and the tax liability had accrued. *State of Bombay v. United Motors (India) Ltd.* [1953] (4 S.T.C. 133; A.I.R. 1953 S.C. 252; [1953] 1 M.L.J. 743) referred to.—A. M. MOHAMMED ISHOK *v.* THE STATE OF MADRAS [1955] 6 S.T.C. 230 (Mad.).

—The assessee carrying on the business of selling certain goods in the State of Madras sold the goods to merchants outside the State and delivered them outside the State. For the assessment years 1949-50 and 1950-51 the assessee was assessed to sales tax on such sales under the Madras General Sales Tax Act, 1939, but they claimed exemption under Article 286(1)(a) of the Constitution of India: *Held*, that if the assessee was able to prove facts entitling them to invoke the aid of the Explanation to Article 286(1)(a) the sales would be exempt from taxation. In the absence of such proof, the sales would fall within Article 286(2) and would be liable to tax under the proviso to Article 286(2) and the Sales Tax Continuance Order, 1950, of the President made thereunder. The decision of the Supreme Court in the *Travancore* case [1953] (4 S.T.C. 205) cannot be construed as an authority for the position that inter-State sales and purchases dealt with in Article 286(2) remain unaffected by the Explanation to Article 286(1)(a). The authority of the decision in the *Bombay* case [1953] (4 S.T.C. 133)

remains unshaken by the *Travancore* case [1953] (4 S.T.C. 205). *East India Match Factory v. The State of Madras* [1954] (5 S.T.C. 269) dissented from.—VEDULLAPALLI SATYANARAYANA MURTHY & BROS. AND OTHERS *v.* THE STATE OF MADRAS [1955] 6 S.T.C. 405 (Andh.).

—In the case of a transaction of sale involving inter-State elements, only that State where the goods are actually delivered for the purpose of consumption would be entitled to tax the transaction under Art. 286(1)(a) of the Constitution. The fact that the goods are delivered for consumption within a particular State should be established by evidence. It is not enough to attract Explanation to Art. 286(1)(a) that the goods purchased in one State have ultimately reached a different State where they were utilised for consumption in that State. It is also necessary to prove that the delivery for consumption was as the direct result of the sale or purchase as the case may be. If the goods were sold and delivered to the buyer in a particular State, the mere fact that subsequently the buyer took those goods by lorry to another State for purposes of consumption would not affect the liability of the goods for sales tax in the State where delivery was effected, for in that case, the goods were not delivered in the second State as a direct result of the sale. *Mohammed Ishok v. The State of Madras* [1955] (6 S.T.C. 230) followed.—APPANA VENKATRAJU *v.* THE STATE OF ANDHRA [1955] 6 S.T.C. 426 (Andh.).

—In the case of a transaction of sale involving inter-State elements, only that State where the goods are actually delivered for the purpose of consumption would be entitled to tax the transaction. But the fact that the goods have been delivered for consumption within a particular State should be established by evidence. It is not enough, to attract the Explanation to Article 286(1)(a), that the goods purchased in one State have ultimately reached a different State where they were utilised for consumption in that State. It is necessary to prove that the delivery for consumption was the direct result of the sale or the purchase as the case may be. If the goods were sold and delivery effected to the buyers in a particular State, the mere fact that subsequently the buyer took the goods to another State for purpose of consumption, could not affect the liability of the goods for sales tax in the State where delivery was effected as in that case the goods were not delivered in the State as a direct result of the sale.—VUDDAGIRI KANAKARAJU AND SONS *v.* THE ANDHRA STATE [1956] 7 S.T.C. 442 (Andh.).

SALES TAX CONTINUANCE ORDER, 1950

[For decisions of the Supreme Court on this subject see pages 358-359 *supra*.]

Customs duty—*Whether sales tax referred to in President's Order*.—Where an assessee filed an application under Article 226 of the Indian Constitution in the Judicial Commissioner's Court of Vindhya Pradesh for the issue of a direction in the nature of *mandamus* and prohibition calling upon the Sales Tax Authorities of that State not to levy sales tax on goods sold and immediately exported for consumption outside the State on the ground that it was *ultra vires* and was not even permitted by the Sales Tax Continuance Order, 1950, as immediately before the commencement of the Constitution no sales tax was levied in that State: *Held*, (1) that the application was maintainable; (2) that the customs duty levied in the Vindhya Pradesh on 25th January, 1950, was not identical with the sales tax referred to in the Sales Tax Continuance Order, 1950, and that as no sales tax was actually levied on articles exported from Vindhya Pradesh on 25th January, 1950, the imposition of sales tax on articles exported from Vindhya Pradesh was illegal.—FIRM MATADIN VISHWANATH *v.* VINDHYA PRADESH GOVERNMENT AND ANOTHER [1951] 2 S.T.C. 16.

—The essential condition for application of the Order is the *actual* levy of *sales tax as such* on commodities prior to the commencement of the Constitution. Customs duty levied is not identical with sales tax.—FIRM MATADIN VISHWANATH *v.* VINDHYA PRADESH GOVERNMENT AND ANOTHER [1951] 2 S.T.C. 16.

—The only power which the President has been granted under the proviso to Article 286(2) is to pass an order, doing away with for a temporary period ending on the 31st March, 1951, the the ban imposed by clause (2) of Article 286. No power has been granted to the President to dispense with the ban imposed by clause (1)(a) of Article 286. The Sales Tax Continuance Order, 1950, issued by the President deals only with the ban imposed by clause (2) of Article 286.—KANPUR OIL MILLS, HARRISGANJ *v.* JUDGE (APPEALS) SALES TAX, KANPUR RANGE, KANPUR, AND OTHERS [1955] 6 S.T.C. 77 (All.).

—The President's Sales Tax Continuance Order, 1950, has only lifted the ban imposed by Article 286(2) of the Constitution and has not surmounted or overcome the ban imposed by the Explanation to Article 286(1)(a). Sales outside Bihar during the period 26th January, 1950, to 31st March, 1951, would be exempted from the

payment of sales tax only if there is proof that the goods were delivered and consumed in the State of first destination. Sales outside Bihar during the above-mentioned period where goods were not consumed in the State of first destination but were re-exported from the State of first destination to other States would be liable to sales tax by virtue of the President's Order of 1950.—*INDIAN STEEL AND WIRE PRODUCTS LTD. v. THE SUPERINTENDENT OF COMMERCIAL TAXES, SINGHBHUM CIRCLE, AND OTHERS* [1956] 7 S.T.C. 776 (Pat.).

—The President's Sales Tax Continuance Order, 1950, was issued under clause (2) of Article 286 and it would not lift the ban placed by Article 286(1).—*DEPUTY COMMISSIONER OF SALES TAX, BANGALORE, In re* [1957] 8 S.T.C. 248 (Mys.).

—The President's Sales Tax Continuance Order, 1950, related to clause (2) of Article 286 of the Constitution and has nothing to do with clause (1) of that article. Consequently the amount representing turnover relating to sale of goods which had taken place outside the State within the meaning of Article 286(1) of the Constitution between the period 26th January, 1950, and 31st March, 1951, was not chargeable to sales tax. The President's Sales Tax Continuance Order, 1950, did not enable the Government to continue to levy sales tax on such sales until 31st March, 1951.—*COMMISSIONER OF SALES TAX, BANGALORE, In re* [1959] 10 S.T.C. 29 (Mys.).

—*Scope of Article 286(1)(a), (2) and Sales Tax Continuance Order, 1950.*—A sale which falls within the scope of the Explanation to Article 286(1)(a) of the Constitution can be a sale in the course of inter-State trade to which the ban imposed under Article 286(2) would also apply. As the ban on taxing a sale in the course of inter-State trade was lifted by the President's Sales Tax Continuance Order, 1950, up to 31st March, 1951, it has to be decided whether such a sale was an inside sale as far as the Madras State was concerned or whether it was an outside sale which came within the scope of the Explanation to Article 286(1)(a). If it was an outside sale, the President's Sales Tax Continuance Order, 1950, would not enable the Madras State to tax the transaction, because the ban imposed by the Explanation to Article 286(1)(a) would apply *proprio vigore* and could not be covered by the President's Sales Tax Continuance Order, 1950, which was concerned only with the lifting of the ban on taxing of sales in the course of inter-State trade.—*VOLKART BROTHERS, MADRAS v. THE STATE OF MADRAS* [1959] 10 S.T.C. 598 (Mad.).

—*Goods delivered for consumption inside State—Liability to sales tax during period 26th January,*

1950, to 31st March, 1952.—The assessee-company was assessed to sales tax for the periods 26th January, 1950, to 31st March, 1951, and 1st April, 1951, to 31st March, 1952, with regard to sales of goods which were delivered for consumption within the territorial limits of Bihar. The assessee contended that the sales were not liable to be taxed by virtue of the provisions of Article 286(2) of the Constitution: *Held*, (1) that with regard to the period 1st April, 1951, to 31st March, 1952, the ban imposed by Article 286(2) of the Constitution had been surmounted by the Sales Tax Laws Validation Act, 1956, and the levy of sales tax was therefore valid; (2) that in view of the Sales Tax Continuance Order, 1950, promulgated by the President, the tax imposed upon the assessee for the period 26th January, 1950, to 31st March, 1951, was not liable to attack on the ground that there was a violation of the provisions of Article 286(2) of the Constitution.—*MESSRS BURN & Co., LTD. v. THE STATE OF BIHAR AND ANOTHER* [1959] 10 S.T.C. 281 (Pat.).

—Sales of goods which were actually delivered in Bihar as a direct result of such sales for the purpose of consumption in Bihar during the period 26th January, 1950, to 30th September, 1951, were liable to be taxed under the Bihar Sales Tax Act, 1947, by virtue of the Sales Tax Continuance Order, 1950, and the Sales Tax Laws Validation Act, 1956.—*WILLIAM JACKS AND COMPANY LTD. v. THE STATE OF BIHAR* [1960] 11 S.T.C. 242 (Pat.) reversed by the Supreme Court in [1963] 14 S.T.C. 375. See page 359 *supra*.

—In the case of sale of goods despatched outside the State and consumed in States other than the State of first destination, only one ban is attracted, namely, the ban imposed by Article 286(2), and not the ban imposed by the Explanation to Article 286(1)(a), and, therefore, sales falling under this category have only one hurdle to surmount, namely, the hurdle imposed by Article 286(2), and that hurdle has been surmounted by the President's Sales Tax Continuance Order, 1950, and by the Sales Tax Laws Validation Act, 1956, for the period from the 26th January, 1950, to the 6th September, 1955.—*BLACKWOOD HODGE (INDIA) LIMITED v. THE STATE OF BIHAR AND ANOTHER* [1960] 11 S.T.C. 41 (Pat.).

—If Article 286(2) of the Constitution applied to a sale the President's Sales Tax Continuance Order, 1950, would justify the levy of tax on such sale up to 31st March, 1951. *S. S. Palanisami Nadar v. The State of Madras* [1959] (10 S.T.C. 207), *Indian Drugs Company, Tuticorin v. The State of Madras* [1959] (10 S.T.C. 322), *Raleigh Investment Co., Ltd. v. Governor-General in Council*

[1947] (15 I.T.R. 332) and *Public Prosecutor v. V. M. Ramalingam Pillai* [1958] (9 S.T.C. 510) followed.—*JAGA BUTTON INDUSTRIES LTD. v. THE STATE OF MADRAS* [1959] 10 S.T.C. 323 (Mad.).

—If Article 286(2) of the Constitution applied to a sale the President's Sales Tax Continuance Order, 1950, would justify the levy of tax on such sale up to 31st March, 1951. *S. S. Palanisami Nadar v. The State of Madras* [1959] (10 S.T.C. 207) followed.—*THE INDIAN DRUGS COMPANY, TUTICORIN v. THE STATE OF MADRAS* [1959] 10 S.T.C. 322 (Mad.).

—See also (1) *TOBACCO MANUFACTURERS (INDIA) LTD. v. COMMISSIONER OF SALES TAX, BIHAR AND ANOTHER* [1956] 7 S.T.C. 745 (Pat.) affirmed by Supreme Court in [1961] 12 S.T.C. 87,

(2) *MULLAJI JAMALUDDIN AND CO. v. THE STATE OF MADHYA PRADESH AND OTHERS* [1958] 9 S.T.C. 499 (M.P.),

(3) *VEDULLAPALLI SATYANARAYANA MURTHY & BROS. AND OTHERS v. THE STATE OF MADRAS* [1955] 6 S.T.C. 405 (Andh.),

(4) *RAM NARAIN SONS LTD. v. ASSISTANT COMMISSIONER OF SALE TAX AND OTHERS* [1955] 6 S.T.C. 627 (S.C.),

(5) *SRI RAMA PURCHASE AND SALES SOCIETY LTD. v. THE STATE OF MADRAS* [1958] 9 S.T.C. 761 (A.P.),

(6) *BATCHU SUBBA RAO & CO. v. COMMERCIAL TAX OFFICER, EAST GODAVARI, KAKINADA* [1959] 10 S.T.C. 394 (A.P.),

(7) *MAHADEO RAM BALI RAM v. THE STATE OF BIHAR* [1958] 9 S.T.C. 173 (Pat.),

and under the following heading.

SALES TAX LAWS VALIDATION ORDINANCE AND ACT, 1956

[For the decisions of the Supreme Court on this subject see pages 358—363 *supra*.]

—The Sales Tax Laws Validation Act (VII of 1956) which validates the law of a State imposing or authorising the imposition of tax on the sale or purchase of any goods where such sale or purchase took place in the course of inter-State trade or commerce during the period between 1st April, 1951, and 6th September, 1955, is valid and is not *ultra vires* the Parliament. But a tax on inter-State sales cannot be validly levied under the charging section of the Bombay Sales Tax Act, 1953, if there has been no levy till the 6th September, 1955, and “levy” means any proceedings taken for the purpose of ascertaining the liability of the assessee to pay tax.—*DIALDAS PARMANAND KRIPALANI v. P. S. TALWALKAR AND OTHERS* [1956] 7 S.T.C. 675 (Bom.).

—Section 2 of the Sales Tax Laws Validation Ordinance, 1956, in terms removes the fetter on the taxation of inter-State sales during the period 1st April, 1951, to 6th September, 1955, only in cases where there was a pre-existing State law providing for such an imposition, and where the only impediment on the levy and collection of such tax was the ban imposed by Article 286(2). The Ordinance does not impose a tax on such transactions. Parliament cannot impose a tax on sales but can relax the fetter imposed by Article 286(2) and nothing more. Where goods were outside the State and property also passed outside the State, the fact that the goods were brought over into the State for delivery or consumption was not by itself an element which attracted tax liability on the terms of the Madras General Sales Tax Act, 1939, as it stood on 26th January, 1950, and the Constitution cannot by itself be deemed to alter the State law so as to impose a tax on sales covered by the Explanation to Article 286(1)(a), if none existed before. The position, however, was altered when section 22 was incorporated in the Madras General Sales Tax Act, 1939, and from that date such sales became taxable under the Madras Act. The Ordinance therefore applied to such sales and after the Ordinance they were not entitled to the exemption based upon Article 286(2). In respect of those sales, where goods were in the Madras State at the time of the contract but were transported to other States by reason of the sale, Explanation (2) to section 2(h) of the Madras General Sales Tax Act, 1939, applied and they would have been liable to tax prior to the Constitution. Tax on such sales could have been lawfully levied even after the Constitution came into force by virtue of the President's Sales Tax Continuance Order, 1950, dated 26th January, 1950, which postponed the application of the prohibition contained in Article 286(2) up to 31st March, 1951. When the President's Order expired on the 1st April, 1951, the levy of the tax became subject to the ban imposed by Article 286(2) and this ban was later incorporated in section 22 of the Madras Act. As there was no tax on the sales covered by the second explanation to section 2(h) after the enactment of section 22, the condition posited by the Ordinance was not satisfied and therefore the Ordinance could not be availed of by the State. Section 22 of the Madras Act could not be regarded as a piece of conditional legislation, *i.e.*, an enactment which levied a tax on inter-State sales subject to the condition of the liability being dormant so long as the ban imposed by Article 286(2) continued to operate and the liability becoming automatically enforceable on the removal of the ban. If the State

Legislature itself passed a law imposing a tax, it could take advantage of the lifting of the ban under Article 286(2) by the Ordinance, but section 22 in its present form is not apt to achieve that purpose. *Poppallal Shah v. The State of Madras* [1953] (4 S.T.C. 188; [1953] S.C.R. 677); *The State of Bombay v. United Motors (India) Ltd.* [1953] (4 S.T.C. 133; [1953] S.C.R. 1069) and *The Bengal Immunity Co., Ltd. v. The State of Bihar* [1955] (6 S.T.C. 446; [1955] 2 S.C.R. 603) referred to.—*Mettur Industries Limited v. The State of Madras* [1956] 7 S.T.C. 691 (Mad.).

—The petitioner-company incorporated under the Indian Companies Act and having its registered office at Fort Cochin in Madras State purchased coal from Calcutta and took the coal so purchased to Cochin by ships and stacked it at the Candle Island in Madras State. This coal was sold to steamers arriving and berthed in Travancore-Cochin State waters of the Cochin harbour to be stored in the ships' bunkers. Subsequently the coal was exported outside the territorial waters of Travancore-Cochin State for consumption on the high seas: *Held*, (1) on a consideration of the documents and affidavits filed by the company, that the goods moved from the Candle Island in the Madras State to the ships berthed in the Travancore-Cochin waters of the Port of Cochin in pursuance of an agreement to sell, that the property in the goods passed in the said waters when the goods were delivered trimmed into bunkers and that the transaction had an inter-State character within the meaning of Article 286(2) as interpreted in the *Bengal Immunity* case [1955] (6 S.T.C. 446) and as reproduced in section 26 of the Travancore-Cochin General Sales Tax Act, 1125; (2) that in view of section 26, it was not possible to say that the Travancore-Cochin General Sales Tax Act, 1125, imposed or authorised the imposition of a tax on the sale or purchase of any goods where such sale or purchase took place in the course of inter-State trade or commerce subsequent at any rate to the insertion of that section with effect from 26th January, 1950, by Act XII of 1951 and Ordinance No. IV of 1951 which it replaced. Consequently the Sales Tax Laws Validation Act, 1956, and the Sales Tax Laws Validation Ordinance, 1956, which it replaced were of no avail to the Travancore-Cochin State; (3) that there was no reason to depart from the conclusion reached in *Kunju Moideen Kunju v. The State of Travancore-Cochin and Others* [1954] (5 S.T.C. 462).—*THE COCHIN COAL COMPANY LIMITED v. THE STATE OF TRAVANCORE-COCHIN AND OTHERS* [1956] 7 S.T.C. 731 (Trav.-Co.) affirmed on different grounds by Supreme Court in

[1961] 12 S.T.C. 1, see page 352 *supra*. See also the decision of the High Court in *DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX, CENTRAL ZONE, ERNAKULAM v. THE COCHIN COAL COMPANY LTD.* [1963] 14 S.T.C. 845 (Ker.) on the validity of the General Sales Tax (Amendment and Validation) Act, 1962. Reversed by Supreme Court in [1968] 21 S.T.C. 403 (S.C.), see page 363 *supra*.

—The Sales Tax Continuance Order, 1950, authorises the State Government to impose sales tax contrary to the provisions of Article 286(2) of the Constitution of India with regard to the period from 26th January, 1950, to 31st March, 1951. For the period from 1st April, 1951, to 6th September, 1955, the imposition of sales tax on the sales or purchases of goods in the course of inter-State trade has been validated by the Sales Tax Laws Validation Act, 1956. With regard to sales of goods despatched outside the State of Bihar and consumed in the State of first destination two bans are attracted. The first ban is imposed by the Explanation to Article 286(1)(a) and the second by Article 286(2). As regards such sales the President's Sales Tax Continuance Order, 1950, and the Sales Tax Laws Validation Act, 1956, are ineffectual and inoperative inasmuch as neither the President's Order nor the Validation Act of 1956 has surmounted the ban imposed by the Explanation to Article 286(1)(a). Sales of goods despatched outside the State of Bihar and consumed in States other than the State of first destination however attract only one ban, namely, the ban imposed by Article 286(2) and that ban has been surmounted during the relevant period by the President's Order of 1950 and the Validation Act of 1956.—*TOBACCO MANUFACTURERS (INDIA) LIMITED v. COMMISSIONER OF SALES TAX, BIHAR, AND ANOTHER* [1956] 7 S.T.C. 745 (Pat.) affirmed by Supreme Court in [1961] 12 S.T.C. 87. See page 353 *supra*.

—Sales falling within the Explanation to Article 286(1)(a) of the Constitution were liable to tax under the Madras General Sales Tax Act, 1939, before the Sales Tax Laws Validation Ordinance, 1956, came into force and therefore the imposition of tax on such transactions which took place between the dates mentioned in the Ordinance was rendered valid by the Ordinance. *Mettur Industries Ltd. v. The State of Madras* [1956] (7 S.T.C. 691) followed.—*BOLLAM VENKATAKRISHNAIAH v. DEPUTY COMMERCIAL TAX OFFICER, SPECIAL CIRCLE, NON-RESIDENT, VEPERY* [1956] 7 S.T.C. 771 (Mad.).

—The Sales Tax Laws Validation Act (VII of 1956) which validated State laws imposing or

authorising the imposition of tax on sales or purchases of goods where such sales or purchases took place in the course of inter-State trade or commerce during the period 1st April, 1951, to 6th September, 1955, was constitutionally valid and was not *ultra vires* the Parliament. Section 2 of the Act not only validated assessments already made but also enabled taxing authorities to call for the returns from dealers and to assess them if the transactions were within the dates mentioned in the section.—*THE MYSORE SPINNING AND MANUFACTURING CO., LTD., AND OTHERS v. THE DEPUTY COMMERCIAL TAX OFFICER, II CIRCLE, NON-RESIDENTS, MADRAS CITY* [1957] 8 S.T.C. 177 (Mad.).

—Section 22 of the Madras General Sales Tax Act, 1939, does not create a liability to tax if a transaction of sale is not liable to be taxed under the Act. That section is a verbal reproduction of Article 286(1) and (2) of the Constitution of India and must be construed in the same way in which that Article has been construed. If so construed, clauses (a) and (b) of section 22 are separate and independent bans and though a sale is within the State within the meaning of the Explanation, the ban imposed by clause (b) exempts it from taxation if it is held in the course of inter-State trade or commerce. Therefore, even after the introduction of section 22, sales or purchases made in the course of inter-State trade or commerce were not liable to be taxed though the goods were delivered for the purposes of consumption inside the State. The Explanation to clause (a)(i) of section 22 cannot be treated as an Explanation to the definition of "sale" under the Act. Consequently there was no pre-existing State law imposing or authorising the imposition of a tax on the sale or purchase of any goods in the course of inter-State trade or commerce wherein the goods were delivered inside the State for the purpose of consumption therein and therefore section 2 of the Sales Tax Laws Validation Act, 1956, could not be applied to such sales and they could not be taxed. *Dialdas Parmanand Kripalani v. P. S. Talwalkar and Others* [1956] (7 S.T.C. 675) distinguished. *Mettur Industries Limited v. The State of Madras* [1956] (7 S.T.C. 691) dissented from.—*THE GOVERNMENT OF ANDHRA v. NOONEY GOVINDARAJULU* [1957] 8 S.T.C. 297 (A.P.).

—Neither the President's Sales Tax Continuance Order, 1950, nor the Sales Tax Laws Validation Ordinance, 1956, nor the Sales Tax Laws Validation Act, 1956, validated the collection of tax by a State on transactions of sale in which goods were actually delivered outside the State for the purpose of consumption

therein. The curative provisions of the President's Order, or the Ordinance or the Act only saved the collection of tax from the operation of the second clause of Article 286, but not from the operation of the first clause of that Article. Sales tax could only be collected by the State in which the goods were actually delivered for the purpose of consumption in that State and not by the State from which the goods were sent for such delivery. The assessee was assessed to sales tax in respect of certain sales in which the goods were not delivered inside the State but were despatched to Uttar Pradesh where other dealers sold them to consumers: *Held*, (1) that the levy of tax on such sales prior to 26th January, 1950, was valid because Explanation (II) to section 2(g) of the C.P. and Berar Sales Tax Act, 1947, enabled the State Government to levy sales tax on sales in which at the time the contract of sale took place the goods were within the State; (2) that the levy of tax on such sales after 26th January, 1950, was invalid because of the bar created by Article 286(1)(a) of the Constitution.—*MULLAJI JAMALUDDIN AND CO. v. THE STATE OF MADHYA PRADESH AND OTHERS* [1958] 9 S.T.C. 499 (A.P.).

—The petitioner, a limited company with its registered office situated in Calcutta was engaged in the manufacture of railway wagons. The Railway Board, New Delhi, placed an order with the managing agents of the petitioner for the manufacture of certain railway wagons and this order was accepted by a letter posted in Calcutta. Under the contract, delivery of the wagons was to be made at the petitioner's work siding situated inside the State of West Bengal and payments were to be made in Calcutta. The wagons, however, were meant for consumption by Railways situated wholly outside the State of West Bengal. The question was whether the transactions effected by the petitioner during the years 1952-53 and 1953-54 were liable to sales tax under the Bengal Finance (Sales Tax) Act, 1941: *Held*, (1) that as the wagons were delivered within West Bengal, the transactions were not "Explanation sales" and were not exempt under Article 286(1)(a); (2) that the transactions constituted inter-State sales and therefore came within the exemption granted by Article 286(2) but as they were effected between 1st April, 1951, and 6th September, 1955, the levy of tax was validated by the Sales Tax Laws Validation Act, 1956. The exemption that is granted under Article 286(2) is not merely inter-State trade or commerce, but to a transaction "in the course of" inter-State trade and commerce. In order to determine whether the transaction is an inter-State sale, it has to be seen whether the contract

of sale provided for movement over the border or contemplated such a movement. In the present case, the contract did contemplate a movement over the border, and the mere fact that delivery was to be at the manufacturer's siding was not enough in the case of manufacture and supply of railway rolling stock to constitute an intra-State sale. The transactions in the present case came under the definition of "sale" as given in the Bengal Finance (Sales Tax) Act, 1941, although if section 27 was in full force the taxation of inter-State sales would be excluded and the transactions could not be the subject-matter of State taxation. Section 27 imposed a ban on the power of taxation in respect of such sales, thus bringing the matter in line with the Constitution. The Sales Tax Laws Validation Act, 1956, removed that ban and the power of the States to tax such sales within the period covered by that Act revived.—*INDIAN STANDARD WAGON CO. LTD. v. COMMERCIAL TAX OFFICER* [1958] 9 S.T.C. 553 (Cal.) affirmed on appeal, see page 368 *supra*.

—The levy of sales tax under the Bengal Finance (Sales Tax) Act, 1941, during the period 1st April, 1951, to 6th September, 1955, on sales falling under the Explanation to Article 286(1)(a) of the Constitution of India is valid by reason of the provisions of section 22 of the Sales Tax Laws Validation Act, 1956. *Indian Standard Wagon Co. Ltd. v. Commercial Tax Officer* [1958] (9 S.T.C. 553) followed.—*ASHOKA MARKETING LTD. v. COMMERCIAL TAX OFFICER, CENTRAL SECTION, CALCUTTA, AND OTHERS* [1958] 9 S.T.C. 624 (Cal.).

—The levy of sales tax under the Bengal Finance (Sales Tax) Act, 1941, during the period 1st April, 1951, to 6th September, 1955, on sales falling under the Explanation to Article 286(1)(a) of the Constitution of India has been validated by the Sales Tax Laws Validation Act, 1956. *Sundararamier & Co. v. The State of Andhra and Another* ([1958] S.C.A. 492; 9 S.T.C. 298), *Indian Standard Wagon Co., Ltd. v. Commercial Tax Officer* [1958] (9 S.T.C. 553) and *Ashoka Marketing Ltd. v. Commercial Tax Officer, Central Section, Calcutta* [1958] (9 S.T.C. 624) followed.—*BLACKSTONE PRODUCTS LTD. v. COMMERCIAL TAX OFFICER, SHYAMBAZAR CHARGE, AND OTHERS* [1958] 9 S.T.C. 796 (Cal.).

—By virtue of the Sales Tax Laws Validation Act, 1956, and during the period mentioned in that Act all sales which came within the range of the Explanation to Article 286 of the Constitution were taxable in the States in which the deliveries were made. A transaction where the sale had been completed in one State but the delivery was effected in another State as an

integral part of the sale attracted the Explanation to Article 286. The Explanation is concerned only with the delivery to the buyer and not with the transport of the goods by his agent across the border and handing them over to his principal in another State. It is only in cases where the delivery is made by the seller himself to the buyer in another State that the Explanation is attracted and the right to levy tax thereon is vested in the State where delivery is effected.—*BERAR OIL INDUSTRIES AND ANOTHER v. THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES, ANANTAPUR* [1959] 10 S.T.C. 199 (A.P.).

—*Effect of Sales Tax Laws Validation Act, 1956.*

—Section 26 of the Travancore-Cochin General Sales Tax Act, 1125, authorised the levy of sales tax on inter-State sales and therefore the provisions of the Sales Tax Laws Validation Act, 1956, validated the levy of such tax during the period 1954-55.—*THE DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX, TRIVANDRUM v. PIERCE LESLIE AND CO. LTD., ALLEPPEY* [1960] 11 S.T.C. 212 (Ker.).

—*Effect of Sales Tax Laws Validation Act, 1956.*

—The effect of the Sales Tax Laws Validation Act, 1956, was to liberate the States from the fetter placed on them by Article 286(2) of the Constitution and to enable the Madras General Sales Tax Act, 1939, to operate on its own terms. Because of the Sales Tax Laws Validation Act, the taxes not only on those covered by the explanation to Article 286(1)(a) but on all inter-State sales had become validated provided they fell within the period mentioned in the Act. Sections 2(h) and 22 of the Madras General Sales Tax Act, 1939, must be read together as defining what are sales that are taxable under the Act, and what are not, and so read, the Explanation to section 22 really means that in sales in which goods are delivered for consumption in the State of Madras the property therein shall be deemed to have passed inside that State notwithstanding that it has under the Sale of Goods Act passed outside that State. The Explanation to section 22 does not contain any exhaustive definition of intra-State sales and it merely mentions one class of such sales that are taxable under the Act. The comprehensive definition is to be found in section 2(h) of the Act and for this purpose the Explanation must also be included therein.—*DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX, TRIVANDRUM v. MALAYALAM PLANTATIONS LTD., KOZHICODE* [1960] 11 S.T.C. 376 (Ker.).

—*Effect of Sales Tax Laws Validation Act, 1956.*

—Sales in the course of inter-State trade, which came within the scope of the Explanation to

Article 286(1)(a) and which were effected during the period specified in section 2 of the Sales Tax Laws Validation Act, 1956, were liable to be taxed by the State of Madras by virtue of section 22 of the Madras General Sales Tax Act, 1939, and section 2 of the Sales Tax Laws Validation Act, 1956.—*MADURA MILLS CO. LTD. v. STATE OF MADRAS* [1960] 11 S.T.C. 622 (Mad.).

—*Essential condition to attract Sales Tax Laws Validation Act, 1956—Effect of Explanation 2 to section 2(k), Hyderabad Act.*—The essential condition to attract the applicability to section 2 of the Sales Tax Laws Validation Act, 1956, which was later replaced by the Sales Tax Laws Validation Act, 1956, is the existence of a law imposing or authorising the imposition of a tax on sales or purchases as contemplated therein. The Explanation to Article 286(1) as understood in the context of the Constitution, though couched in a positive form, was regarded purely as negative in character. But when engrafted into the Sales Tax Acts, it had a positive element authorising the States to impose a tax on Explanation sales. The Explanation acquired a force, which it did not have in the source from which it was drawn. Explanation 2 to section 2(k) of the Hyderabad General Sales Tax Act, 1950, provided as follows: "Notwithstanding anything to the contrary in any other law for the time being in force, a transfer of goods, in respect of which no tax can be imposed by reason of the provisions contained in Article 286 of the Constitution, shall not be deemed to be 'sale' within the meaning of this clause." The assessee who was assessed to sales tax on sales falling under Explanation to Article 286(1)(a) during the period mentioned in section 2 of the Sales Tax Laws Validation Act, 1956, contended that the only purpose of Explanation 2 to section 2(k) was to exclude certain categories of sales which fell under Article 286 from the definition of sale and that it did not authorise the State to impose a tax on Explanation sales: *Held*, that taking into consideration the main object and intention of the statute, it should be said that the whole of Article 286 of the Constitution was imported into section 2(k) of the Hyderabad General Sales Tax Act, 1950, and it had the same connotation as section 22 of the Madras General Sales Tax Act, 1939. Consequently the doctrine of *Sundaramier & Co. v. The State of Andhra Pradesh* [1958] (9 S.T.C. 298) applied with full force to section 2(k) and the levy of sales tax on Explanation sales was valid. The object of adding Explanation 2 to section 2(k) in the Hyderabad General Sales Tax Act was to bring the sales tax law of the State in consonance with the Constitution. In fact, the existing State laws all over India

were attempted to be brought into conformity with the provisions of the Constitution by means of Adaptation laws and subsequent amendments. In doing so, the different States adopted different devices. The main bulk of the Sales Tax Acts added sections similar to section 22 of the Madras General Sales Tax Act. Some States amended the definition section itself by incorporating the Explanation. A few of the States adopted a different device. By referring to Article 286 of the Constitution in the Explanation to section 2(k) of the Hyderabad General Sales Tax Act, 1950, the Legislature had incorporated the whole of that Article in this Explanation.—*THE STATE OF ANDHRA PRADESH v. THE DUNLOP RUBBER CO. (INDIA) LIMITED, BOMBAY, AND OTHERS* [1960] 11 S.T.C. 632 (A.P.).

—*Effect of Sales Tax Laws Validation Act, 1956.*—A purchaser in an inter-State sale transaction which is not taxable by the Madras State, being a sale falling within the Explanation to Article 286(1)(a) [the goods having been actually delivered for purpose of consumption in another State] is not a purchaser in the Madras State within the meaning of rule 4-A(iv). The Constitution has imposed a ban on the States' power to tax transactions of inter-State sale or purchase. This ban can however be lifted or removed by Parliament. But even if the ban is removed no State can tax an inter-State sale which takes place outside its territorial limits. What is an "outside sale" is defined by the Constitution by the Explanation to Article 286(1) which states what should be deemed to be an "inside sale". The irresistible inference is that an "inside sale" falling within the terms of the Explanation can be taxed if the Parliament lifts the ban under Article 286(2). If the terms of the Explanation do not cover a particular inter-State sale then the question whether the sale is an "outside sale" qua the taxing State has to be determined by finding out the place where the property in the goods passes. In respect of an inter-State sale not falling within the Explanation to Art. 286(1)(a) on the lifting of the ban by the Parliament under Article 286(2) the State wherein the property in the goods passes may levy tax if the words of the taxing section of the enactment are wide enough to cover such a transaction. The petitioners carrying on the business of purchase and sale of cotton in the Madras State sold cotton to a mill at Trichur in the Kerala State. It was found by the Tribunal that these sales were inter-State sales falling within the Explanation to Article 286(1)(a) of the Constitution. The petitioners contended that though the sales were really inter-State sales and deliveries were effected as a direct

result of such sales for the purpose of consumption in the Kerala State, as the sales between 1st April, 1955, and 6th September, 1955, were covered by the Sales Tax Laws Validation Act, 1956, the mill in Trichur would be the last purchasers liable to be taxed under the Madras General Sales Tax Act, 1939, read with rule 4-A(iv) of the Turnover and Assessment Rules, and they could not be assessed to tax: *Held*, (1) that the Validation Act cannot have the effect of treating all inter-State sales as intra-State sales as that would amount to abrogation of Article 286 of the Constitution altogether. The Constitution prohibits a State from taxing sales outside the State and the Explanation to Article 286(1) is the dictionary that defines an inside sale permitting State levy; (2) that with regard to "Explanation sales", the State in which actual delivery is effected for purpose of consumption can levy tax on the sale during the period 1st April, 1951, to 6th September, 1955, as the Parliament has lifted the ban under Article 286(2) by the Sales Tax Laws Validation Act, 1956. But with regard to what may be called "non-Explanation sales", that is, sales which do not fall within the Explanation to Article 286(1) of the Constitution, the mere lifting of the ban under Article 286(2) by the Parliament will not enable a State to levy a tax in respect of that sale which may yet be a sale outside the State territory; (3) that the sales in the present case were outside the Madras State as they were inside the Kerala State, that State being the "delivery-cum-consumption" State. Therefore the transactions could not be taxed under the Madras Act and the mill at Trichur was not the last purchaser within the meaning of rule 4-A(iv). Case law discussed.—S. RAMASWAMI MUDALIAR AND CO. AND ANOTHER *v.* THE STATE OF MADRAS [1962] 13 S.T.C. 785 (Mad.).

—*Scope and effect of Sales Tax Laws Validation Act, 1956.*—The Constitution has clamped upon the States' power to tax sale or purchase in the course of inter-State trade or commerce a fetter, which if such sale or purchase is outside the taxing State under Article 286(1)(a), is incapable of being loosened except by an amendment of the Constitution. The Sales Tax Laws Validation Act, 1956, only provided for lifting of the ban to the extent to which the Parliament was permitted to do so under the clear terms of the Constitution. It has not permitted the States to levy tax on outside sales falling under Article 286(1)(a) even if the taxing statutes are sufficiently clear and wide in their terms to cast the net of taxation. The ban imposed on the State to tax sale or purchase taking place outside the taxing State is absolute and independent of the other bans in Article 286, and Article 286(2) is not capable of

being interpreted as enabling the Parliament to destroy it. Case law discussed.—DEPUTY COMMISSIONER (C.T.), COIMBATORE DIVISION, COIMBATORE *v.* R. M. DEVAN [1963] 14 S.T.C. 923 (Mad.) affirmed on appeal to Supreme Court in [1968] 21 S.T.C. 51 (S.C.), see page 363 *supra*.

—*Effect of Sales Tax Laws Validation Act, 1956.*—Section 27 of the Bengal Finance (Sales Tax) Act, 1941, as extended to Delhi did not in any manner nullify the definition of "sale" in section 2(g) of that Act which clearly provided for the imposition of sales tax on sales taking place in the course of inter-State trade. The only hindrance for the imposition of such tax was lack of sanction by Parliament and that was removed by the Sales Tax Laws Validation Act, 1956.—MARTIN BURN LIMITED *v.* THE STATE [1964] 15 S.T.C. 294 (Pat.).

—*Applicability of Sales Tax Laws Validation Act, 1956.*—The assessee despatched goods to purchasers outside the Madras State, principally by post, money being recovered from the postal department by V.P.P. The assessee also sent goods by rail and delivered the railway receipts to the purchasers against payment. On the question whether the sales were taxable by the Madras State during the period 1st April, 1955, to 6th September, 1955, by reason of the Sales Tax Laws Validation Act, 1956: *Held*, (1) that whether on the general principles of the Sale of Goods Act, 1930, or by virtue of the Explanation to Article 286(1)(a) the sales must be said to have taken place outside the Madras State; (2) that the Sales Tax Laws Validation Act, 1956, lifting the ban under Article 286(2) only enabled the delivery-cum-consumption State to tax the inter-State sales and did not authorise the Madras State, from which the goods moved, to tax the sales.—A. JAINULABDEEN SAHIB *v.* THE STATE OF MADRAS [1964] 15 S.T.C. 413 (Mad.).

—Sales Tax Laws Validation Act, 1956—Government Order that assessment and collection of tax on sales falling under Explanation to Article 286(1)(a) should not be made if tax has not been collected by non-resident seller—Collections by way of "deposits" from purchasers—Government seeking to recover the amounts collected—Tribunal's finding that no tax has been collected but no relief is given—Effect of Tribunal's order—Proper remedy—When writ of prohibition or *mandamus* can be issued—Administrative directions of Government—Whether create any right—Constitution of India, Articles 226, 286(1)(a).—B. D. NARASIMHA SETTY AND ANOTHER *v.* DEPUTY COMMERCIAL TAX OFFICER, SPECIAL CIRCLE, NON-RESIDENT, MADRAS-7 [1963] 14 S.T.C. 94 (Mad.).

—See also *MAHADEO RAM BALI RAM v. THE STATE OF BIHAR* [1958] 9 S.T.C. 173 (Pat.) and *SALES TAX CONTINUANCE ORDER, 1950*, page 383 *supra*.

—*Scope and effect of Sales Tax Laws Validation Act, 1956*.—Article 286 of the Constitution imposed several distinct and independent bans on the power of a State to levy tax and the removal of the ban imposed by Article 286(2) by the Sales Tax Laws Validation Act, 1956, did not amount to the removal of the ban imposed by Article 286(1)(a), which prohibited a State from taxing a sale which took place outside the State. The decision in *Ashok Leyland's case* [1961] (12 S.T.C. 379) could not be relied upon for enabling the Madras State to tax sales which under the Explanation to Article 286(1)(a) became located as sales in States other than the Madras State. The Madras State was an outside State so far as such sales were concerned and the ban on the levy of a tax in respect of an outside sale being inviolate, the Madras State could not tax those sales even if they came under Explanation (2) to section 2(h) of the Madras General Sales Tax Act, 1939. *A. Jainulabdeen Sahib v. The State of Madras* [1964] (15 S.T.C. 413) and *S. Ramaswami Mudaliar & Co. and Another v. The State of Madras* [1962] (13 S.T.C. 785) followed.—*BOMBAY COMPANY PRIVATE LTD. v. STATE OF MADRAS* [1964] 15 S.T.C. 804 (Mad.) affirmed in [1968] 21 S.T.C. 51 (S.C.), see page 363 *supra*.

—*Scope and effect of Sales Tax Laws Validation Act, 1956*.—The decision in *Ashok Leyland's case* [1961] (12 S.T.C. 379) interpreted only the scope of the ban under Article 286(2) of the Constitution, but where a sale was an outside sale within the meaning of the Explanation to Article 286(1)(a) of the Constitution, i.e., where goods were delivered to buyers outside the Madras State for consumption in the delivery States, the ban under Article 286(1)(a) of the Constitution would operate to render them not liable to tax in the Madras State. Even if such sales attracted Explanation (2) to section 2(h) of the Madras General Sales Tax Act, 1939, they could not be taxed by the Madras State. *A. Jainulabdeen Sahib v. The State of Madras* [1964] (15 S.T.C. 413) followed.—*DEPUTY COMMISSIONER OF COMMERCIAL TAXES, MADURAI DIVISION, MADURAI v. MADURA KNITTING COMPANY* [1964] 15 S.T.C. 807 (Mad.) affirmed in [1968] 21 S.T.C. 51 (S.C.), see page 363 *supra*.

ESSENTIAL GOODS—ARTICLE 286(3)

(SUPREME COURT DECISIONS)

Scope of Article 286(3)—Validity of Pepsu Ordinance.—Section 3 of the Essential Goods

(Declaration and Regulation of Tax on Sale or Purchase) Act (LII of 1952) is in line with Article 286(3) of the Constitution of India and there is no inconsistency between that section and the relevant provisions of the Constitution. Section 3 of Act LII of 1952 does not affect the Patiala and East Punjab States Union General Sales Tax Ordinance (XXXIII of 2006) for the Ordinance was not made after the commencement of that Act. The Ordinance has not become void on the ground that it runs counter to clause (3) of Article 286 of the Constitution inasmuch as that clause contemplates a post-Constitution law and the Ordinance is a pre-Constitution law. [Their Lordships did not express any opinion as to the validity or otherwise of a law made after the commencement of the Constitution but before the coming into operation of Act LII of 1952].—*SARDAR SOMA SINGH AND OTHERS v. THE STATE OF PEPSU AND UNION OF INDIA* [1954] 5 S.T.C. 112 (S.C.).

Scope of Article 286(3).—The validity of a law as contravening Article 286(3) of the Constitution can be successfully challenged only when the three conditions prescribed by that article are present: First, the impugned law must be a law made by the Legislature of a State subsequent to the Constitution. Secondly, at the time when the impugned law is passed there is a pre-existing declaration made by Parliament in regard to the essential character of a commodity. Thirdly, the impugned law must have been passed subsequent to the Constitution. Assuming that the Madhya Bharat Sales Tax Act, 1950, authorised the imposition of tax on certain essential goods, as the goods were not declared by Parliament by law to be essential for the life of the community before the date of the Act, its validity could not be challenged on the ground that it was not reserved for the consideration of the President and had not received his assent.—*INDORE IRON & STEEL REGISTERED STOCK-HOLDERS' ASSOCIATION (P.) LTD. v. THE STATE OF MADHYA PRADESH AND OTHERS* [1961] 12 S.T.C. 622 (S.C.).

Madras Act as applied to Andhra State—Whether new Act.—The Madras Act as applied to the Andhra State is not a new Act for purposes of Article 286(3). The Madras Act was in force in the territories which now form part of the Andhra State until 1st October, 1953, and thereafter that Act continues to be in operation by force of section 53 of the Andhra State Act. Moreover, the Madras Act became operative in the new State of Andhra not under any law passed by the Legislature of the State of Andhra but under section 53 of a law enacted by Parliament and therefore Article 286(3) has no

application.—*M. P. V. SUNDARAMIER & Co. AND OTHERS v. STATE OF ANDHRA PRADESH AND ANOTHER* [1958] 9 S.T.C. 298 (S.C.).

Essential Supplies (Temporary Powers) Act—*Whether declares goods essential for purpose of Art. 286(3).*—The Essential Supplies (Temporary Powers) Act (XXIV of 1946) was not an Act declaring any commodity essential for the life of the community within the contemplation of Article 286(3). Any Act of Parliament declaring certain goods to be essential for its own purposes, as Act XXIV of 1946 does, is not an Act within the contemplation of Article 286(3). The Parliamentary Act, there contemplated, has to be passed in exercise of the powers contained in it and must clearly be referable to it. The contention that in view of Article 286(3) no tax can be levied on the sale of a commodity declared essential by Act XXIV of 1946 is not therefore correct. BOSE, J.—On and from August 17, 1950, when Parliament applied the Essential Supplies (Temporary Powers) Act of 1946 to Hyderabad, that Act became a Parliamentary enactment so far as the State of Hyderabad was concerned and therefore the declaration in that Act about essential commodities became a Parliamentary declaration for that area. When that Act declared groundnuts to be essential, it meant essential for the purposes for which such a commodity is normally essential, namely, the life of the community within the meaning of Article 286(3). Under that Article on and from the date of Parliamentary declaration no law existing or future can take effect unless it has been reserved for the consideration of the President and has received his assent. As the Hyderabad General Sales Tax Act, 1950, imposing tax on purchase of groundnuts was not reserved for the consideration of the President, the levy of tax on purchase of groundnuts was illegal. *Konduri Buchi Rajalingam v. State of Hyderabad and Others* [1954] (5 S.T.C. 401) affirmed.—*KONDURI BUCHIRAJALINGAM v. THE STATE OF HYDERABAD AND OTHERS* [1958] 9 S.T.C. 397 (S.C.).

—*Held*, by S. R. DAS, C.J., VENKATARAMA AYYAR, S.K. DAS and SARKAR, J.J. (BOSE, J., dissenting)—The Essential Supplies (Temporary Powers) Act (XXIV of 1946) was not an Act declaring any commodity essential for the life of the community within the contemplation of Art. 286(3). Any Act of Parliament declaring certain goods to be essential for its own purposes, as Act XXIV of 1946 does, is not an Act within the contemplation of Art. 286(3). The Parliamentary Act, there contemplated, has to be passed in exercise of the powers contained in it

and must clearly be referable to it. The contention that in view of Article 286(3) no tax can be levied on the sale of a commodity declared essential Act XXIV of 1946 is not therefore correct. Article 286(3) contemplates a law passed by a State after the Parliamentary law declaring goods to be essential. Section 3 of Act LII of 1952 clearly states that a law by a State Legislature made after the commencement of Act LII of 1952 shall not impose a tax on the sale or purchase of commodities declared essential by the Parliamentary Act. In doing this, it is only carrying out the clear intention of Article 286(3). Therefore, a law made by a State Legislature before Act LII of 1952 commenced to operate is not at all affected by Article 286(3). The validity of an Act depends on the legislative competency and if competency is not challenged, the Act must be a valid piece of legislation whatever may have been the intention which led to its enactment. A transfer of goods which under Explanation 2 to section 2(k) of the Hyderabad General Sales Tax Act, 1950, is not to be regarded as a sale within the meaning of that Act is a transfer of goods which cannot be taxed under an Act of a State Legislature passed after the Parliamentary Act declaring these goods to be essential for the life of the community. No Act was passed by the Hyderabad Legislature purporting to tax any sales of goods declared essential by Act LII of 1952, and therefore it could not be said that transfers of coarse and medium cloth were not sales within the meaning of the Hyderabad General Sales Tax Act, 1950. *Konduri Buchirajalingam v. The State of Hyderabad and Others* [1958] (9 S.T.C. 397) followed.—*FIRM OF A. GOWRISHANKAR v. SALES TAX OFFICER, SECUNDERABAD, AND ANOTHER* [1958] 9 S.T.C. 407 (S.C.).

—The State Legislature is free to enact laws which would have retrospective operation. Its competence to make a law for a certain past period depends on its present legislative power and not what it possessed at the period of time when its enactment is to have operation. Consequently although hides and skins were goods declared essential for the life of the community by the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, 1952, the Madras General Sales Tax (Special Provisions) Act 11 of 1963 is not invalid for want of President's assent.—*A. HAJEE ABDUL SHUKOOR AND Co. v. STATE OF MADRAS* [1964] 15 S.T.C. 719 (S.C.).

Essential goods—Edible oils—Provision delegating power to State Government to fix rates without guidance—Whether void—After enactment of Central Act 52 of 1952 retrospective amendment of provision

fixing maximum at 2 pice per rupee—Validity—Subsequent notification withdrawing exemption to certain dealers of edible oils—Whether effective—Whether Amendment Act and Notification invalid for not being reserved for assent of President.—Section 5 of the East Punjab General Sales Tax Act, 1948, as originally passed in 1948, was void on the ground of excessive delegation of legislative power to the State Government. The striking down of section 5 did not render void section 4 and the other sections of the Act though till an appropriate section 5 was inserted, section 4 remained unenforceable. Section 5 as amended by the East Punjab General Sales Tax (Second Amendment) Act (19 of 1952) was not invalid on the ground of excessive delegation of legislative authority nor was it invalid on the ground that Act 19 of 1952 purported to amend a still-born section. Though in terms Act 19 of 1952 amended section 5, in substance it inserted a new amended section 5 in the main Act with retrospective effect. *Devi Dass Gopal Krishnan and Others v. State of Punjab and Others* [1967] (20 S.T.C. 430) followed. Section 5 of the East Punjab General Sales Tax Act, 1948, as amended by the East Punjab General Sales Tax (Second Amendment) Act, 1952, authorising the fixation of the rate of tax leviable on the taxable turnover, was a law authorising the imposition of a tax within the purview of Article 286(3) of the Constitution prior to its amendment by the Constitution (Sixth Amendment) Act, 1956. Since the East Punjab Act of 1952 was not reserved for the consideration of the President and did not receive his assent, in so far as it authorised the imposition of a tax on the sales or purchases of edible oil (an essential commodity) it could not take effect during the currency of Article 286(3) as it stood before the Sixth Amendment. The fact that the amended section 5 of the Act was retrospective in operation made no difference. It was still a law made after the Constitution came into force and after Parliament had by law declared edible oil to be essential for the life of the community. The amended section 5 could not therefore take effect at all either prospectively or retrospectively in respect of sales and purchases of essential goods while the ban of Article 286(3) continued, but it could take effect in respect of sales and purchases of other goods. While the restriction imposed by Article 286(3) continued, the section could not affect essential goods, but as soon as the restriction was removed, it became fully effective: the section was not void or still-born. Article 286(3) prior to its amendment in 1956 did not authorise Parliament to legislate on the subject of tax on the sale or purchase of goods in entry 54, List II.

It only conferred on Parliament authority to declare that certain goods were essential for the life of the community. On such a declaration being made, the check imposed by Article 286(3) came into operation. But on the amendment of Article 286(3) by the Constitution (Sixth Amendment) Act, 1956, this check was lifted and thereafter section 3 of the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, 1952, which had no independent existence, had no force. As from September 11, 1956, when Article 286(3) was amended, section 5 of the East Punjab General Sales Tax Act, 1948, as amended in 1952, took effect on sales or purchases of edible oil also. Notification No. 3483-E and T-54/723 (CH) dated August 5, 1954, issued by the Punjab Government, was not a "law made by the Legislature of a State" within the meaning of Article 286(3). Though issued after the passing of the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, 1952, it did not require the assent of the President for affecting essential goods. It took effect in respect of edible oil also as from August 5, 1954, and thereafter, sales of edible oil produced in ghanis run by mechanical power were taxable. But as the amended section 5 of the East Punjab General Sales Tax Act, 1948, could not then affect edible oil, no tax was effectively imposed on it until September 11, 1956, during the currency of the unamended Article 286(3) of the Constitution. Therefore sales effected before September 11, 1956, of edible oil produced in ghanis run by mechanical process were not liable to sales tax under the Act. After the passing of the East Punjab General Sales Tax (Second Amendment) Act, 1952, the result was that from the very commencement of the main Act the amended section 5 was deemed to have authorised the State Government to issue notifications fixing the rate of tax. The notifications issued by the State Government under section 5 before 1952 must, therefore, be deemed to be and always to have been valid and not still-born. It was not necessary to pass another Act validating those notifications, nor was it necessary for the State Government to issue fresh notifications fixing the rate of tax. An appeal by the State against the decision of the High Court cannot be said to be incompetent or not maintainable merely because the Financial Commissioner gives effect to the decision of the High Court under section 22(5) of the East Punjab General Sales Tax Act, 1948, and gives relief to the taxpayer. In so far as the judgment of the High Court is varied or reversed by the Supreme Court in appeal, effect has to be given to the order of the Supreme Court.—THE STATE

OF PUNJAB *v.* SANSARI MAL PURAN CHAND [1968] 21 S.T.C. 91 (S.C.).

Power of State Legislature to levy sales tax on declared goods.—See *MODI SPINNING AND WEAVING MILLS CO. LTD. v. COMMISSIONER OF SALES TAX, PUNJAB AND ANOTHER* [1965] 16 S.T.C. 310 (S.C.), *DEVI DASS GOPAL KRISHNAN AND OTHERS v. THE STATE OF PUNJAB AND OTHERS* [1967] 20 S.T.C. 430 (S.C.) and *BHAWANI COTTON MILLS LTD. v. THE STATE OF PUNJAB AND ANOTHER* [1967] 20 S.T.C. 290 (S.C.).

(DECISIONS OF HIGH COURTS)

Andhra Pradesh—Levy of sales tax on milk—Whether illegal after enactment of Act LII of 1952.—It is only law made by the State Legislature after the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act (LII of 1952) has come into effect that is governed by Act LII of 1952. As the Madras General Sales Tax Act, 1939, has been in force prior to Act LII of 1952 the levy of sales tax on milk under the Madras Act could not be impugned as illegal. —*TADEPALLIGUDEM CO-OPERATIVE MILK SUPPLY SOCIETY LTD. v. THE GOVERNMENT OF ANDHRA* [1959] 10 S.T.C. 26 (A.P.).

—Notification imposing tax on cereals at first point of purchase.—The interdiction in Article 286(3) of the Constitution on the power of the State to impose tax applied only to laws passed by the Legislature of a State after the Constitution came into effect. Where the notification dated 14th May, 1955, directing the imposition of tax at the first point of purchase in regard to transactions in cereals was made by the Rajapramukh of the Hyderabad State in accordance with the amendment made by the Hyderabad General Sales Tax (Amendment) Act, 1955, which received the assent of the President: *Held*, (1) that the imposition of tax on cereals was not contrary to Article 286(3) of the Constitution; (2) that under the Hyderabad General Sales Tax Act, 1950, tax was leviable on the aggregate amount for which goods are either bought or sold and therefore the notification was not repugnant to the provisions of the Act; (3) that as the tax was imposed by the Legislature and the notification merely determined the point at which it was to be levied, the notification was not bad on the ground that there was a delegation of legislative power. —*JAI DAYAL v. DEPUTY COMMERCIAL TAX OFFICER, OSMANGANJ* [1960] 11 S.T.C. 782 (A. P.).

Hyderabad—Scope of Article 286(3).—Before any law can be impugned as not conforming with the provisions of clause (3) of Article 286 of the Constitution of India there must be a law of the Parliament declaring any commodity or article as being essential for the life of the community.

—*SHARFAJI RAO v. COMMISSIONER OF SALES TAX* [1953] 4 S.T.C. 6 (Hyd.).

—Tax on medium and coarse cloth.—The Hyderabad General Sales Tax Act, 1950, came into force on 1st May, 1950, and coarse and medium cloths were made liable to taxation under the third amendment to the Act which became enforceable from 1st August, 1952. The question was whether the enactment by Parliament of the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act (LII of 1952) on 9th August, 1952, which declared coarse and medium cloths essential to the life of the community within the meaning of Article 286(3) of the Constitution of India, necessitated President's assent under Article 286(3) to preserve the legality of the statute taxing coarse and medium cloths: *Held*, that as the tax on coarse and medium cloths was being levied under an enactment which was earlier to the Central Act LII of 1952, President's assent under Article 286(3) was not necessary and the levy was therefore lawful: *Held further*, that the enactment of the impugned Act was not a colourable exercise of legislative power and it did not infringe the guarantee relating to equality before the law. —*FIRM OF SOMA RAJAI AH AND OTHERS v. SALES TAX OFFICER, SECUNDERABAD, AND ANOTHER* [1954] 5 S.T.C. 187 (Hyd.). For the decision of the Supreme Court on appeal see page 392 *supra*.

—Tax on food-stuffs.—It cannot be said that inasmuch as food-stuffs have been included among the essential commodities in the Essential Supplies (Temporary Powers) Act (XXIV of 1946) the State Legislature cannot pass any law which purports to levy a tax on them by virtue of Article 286(3) of the Constitution of India. The Essential Supplies (Temporary Powers) Act is a law which relates to the regulation, control, production, supply and distribution of essential commodities, while what is contemplated under Article 286(3) is the prohibition against the levy of tax on goods which have been declared to be essential to the life of the community. The essential goods mentioned in Act No. XXIV of 1946 are not the same as the essential commodities necessary for the life of the community mentioned in Article 286(3). The purpose of Act No. XXIV of 1946 is entirely different from the Act which would relate to the essential commodities for the life of the community. No goods other than those mentioned in the Schedule to the Sales Tax Act can be exempted from the levy of the tax. It is only when Parliament declares any particular commodity as being essential for the life of the community that the State Legislature would be

incompetent to levy tax on such commodity, otherwise not.—*M. A. GANAPATHY IYER AND ANOTHER v. HYDERABAD STATE* [1954] 5 S.T.C. 334 (Hyd.).

Madras—Exemption to vegetables—Validity of notification withdrawing exemption.—The imposition of tax on certain vegetables by a notification withdrawing the exemption till then granted to those vegetables by another notification was not in contravention of section 3 of the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act (LII of 1952).—*K. PARTHASARATHY MUDALIAR v. THE STATE OF MADRAS* [1957] 8 S.T.C. 632 (Mad.).

—Groundnut—Whether essential commodity under Article 286(3) of the Constitution of India.—*SREE RADHAKRISHNA GROUNDNUT OIL MILL v. THE STATE OF MADRAS (NOW ANDHRA)* [1954] 5 S.T.C. 357 (Mad.).

—“Law imposing tax”, meaning of—Scope of Article 286(3) and section 3 of Act 52 of 1952—Whether rules 15 and 16, Turnover and Assessment Rules, “law imposing tax”—Amendment to rules not reserved for consideration of President—Validity of rules.—Rules 15 and 16 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, were subordinate legislation whose subject-matter was the prescription regarding assessment and collection of taxes “imposed” by sections 3 and 5 of the Madras General Sales Tax Act, 1939, and though without their existence, it could not have been possible to levy or collect the tax, they were not in themselves “laws imposing the tax” within the meaning of Article 286(3) of the Constitution or section 3 of the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, 1952. Consequently the amendment effected to rules 15 and 16 by notification dated 3rd September, 1955, was not invalid for not being reserved for the consideration of the President as required by Article 286(3) read with section 3 of Central Act 52 of 1952. Article 286(3) of the Constitution addresses itself to the future and not to the past; it imposes fetters on post-Constitution laws and does not seek the invalidation of laws in existence on the date of the Constitution. The Sales Tax Acts of the several States which were “existing laws” on the date of the Constitution were therefore left unaffected and were operative without any restriction. The constitutional prohibition did not operate of its own force but was dependent on parliamentary legislation declaring a commodity to be “essential to the life of the community” before the restriction came into operation. On the terms of section 3 of Act 52 of 1952 the area of the State laws which were saved extended to those in force

on 9th August, 1952, because only the State laws enacted after the coming into force of Act 52 of 1952 were hit at by the restriction imposed by the Act. Subordinate legislation in the sense of a rule made under an enactment is a “law” within the opening words of Article 286(3) of the Constitution and section 3 of Act 52 of 1952. Taxes levied by virtue of power conferred by lawful delegation would be comprehended within the meaning of the words “laws authorising the imposition of a tax”. If a Sales Tax Act left the fixation of the rate of levy to a rule, that rule would be “a law imposing the tax” because the rate of tax is such an essential constituent part of tax legislation that it would be impossible to take them out of the category of “a law imposing a tax”. The expression “laws imposing taxation” occurring in the Constitution of India should receive a limited construction. A law dealing with taxation is not necessarily a “law imposing taxation”. The provisions in the Madras General Sales Tax Act in relation to the levy of the tax, namely section 3(1) and (2) as modified by the provisions of section 5, constitute “the law imposing the tax”. The rest of the Act which contains merely machinery provisions for the assessment and collection of tax or the rules which deal with these matters would be laws “dealing” with sales tax but they would not be “laws imposing the tax”. A law which prescribes the conditions on which the tax liability should arise can properly be described as part of the law imposing the tax. Such effect cannot however be attributed to rules 15 and 16 of the Turnover and Assessment Rules.—*PALANIAPPA CHETTIAR AND CO. AND OTHERS v. THE DEPUTY COMMERCIAL TAX OFFICER, MOORE MARKET DIVISION, MADRAS, AND OTHERS* [1959] 10 S.T.C. 171 (Mad.). This decision was affirmed by a Division Bench on different grounds.—*See below.*

—The assessee who were dealers in hides and skins filed petitions under Article 226 of the Constitution of India and contended that rules 15 and 16 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, made under sections 3, 5 and 19 of the Madras General Sales Tax Act, 1939, and published in the Fort St. George Gazette on 7th September, 1955, would be a law imposing or authorising the imposition of tax on the sale or purchase of hides and skins, which had been declared by Parliament to be essential to the life of the community by the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, LII of 1952, and that as no assent of the President was obtained under Article 286(3) of the Constitution previous to the promulgation of the Rules, they

should be held to be invalid. RAJAGOPALA AYYANGAR, J., who disposed of the writ petitions, held that Article 286(3) of the Constitution imposed fetters only on post-Constitution laws, that it could not operate on the Madras General Sales Tax Act, 1939, which was enacted long anterior to the Constitution, that the provisions contained in section 3(1) and (2) as modified by section 5 of that Act, would constitute the law imposing tax, that the Rules made by virtue of section 19 contained only machinery provisions for the assessment and collection of tax and that, although these could be properly termed as laws dealing with sales tax, they would not be laws imposing tax, and as such, would not come under the ban contained in Article 286(3). On appeal : *Held*, (1) that the limited meaning given to the term "law imposing a tax" by the Australian cases was not so much the result of any statutory or judicial definition of the term, but mainly dictated by the constitutional procedure of that country and therefore the decisions of Australian Courts which interpreted the words "law imposing a tax" could not really be a guide in the interpretation of similar words in Article 286(3) of the Constitution; (2) that rule 16 should be considered, as the old rule 16 was considered, to be an integral part of the charging provisions and it would, therefore, be a part of the law imposing tax; (3) that in the case of hides and skins, as the relevant Turnover and Assessment Rules would also be the charging provisions, the Madras General Sales Tax Act, 1939, should be held to be merely one authorising the imposition of a tax in regard to such goods; but, if after the passing of Act LII of 1952, sales tax legislation was enacted in regard to commodities declared by Act LII of 1952, it would also require the assent of the President, notwithstanding the fact that it merely authorised the imposition of tax; (4) that in the case of a State legislation which authorised the levy of a tax to a delegated authority, the assent of the President given to the main Act covered the delegation as well, and the subsequent delegated legislation would also be covered by the President's assent, if one was necessary. If therefore the original Act did not require the President's assent under Article 286(3) as having been passed before the Constitution or at a time when there was no legislation by Parliament regarding essential commodities, the subordinate or delegated legislation, which should be deemed to be part of that Act, also did not require the President's assent; (5) that the Madras General Sales Tax Act, 1939, was passed by the State Legislature long prior to the Constitution and though rules 15 and 16 came into force only on 9th August, 1955, they should be

deemed to be part of the Act as valid delegated legislation and could not be said to be a law passed by the State Legislature imposing a tax after the Constitution came into force and, therefore, there was no necessity to reserve them for the consideration and assent of the President under Article 286(3). *Palaniappa Chettiar and Co. and Others v. The Deputy Commercial Tax Officer, Moore Market Division, Madras, and Others* [1959] (10 S.T.C. 171) affirmed on different grounds.—*SREENIVAS & Co. v. THE DEPUTY COMMERCIAL TAX OFFICER, MOORE MARKET DIVISION, MADRAS* [1960] 11 S.T.C. 68 (Mad.).

Mysore—Validity of Mysore Act imposing tax on hides and skins.—Clause (3) of Article 286 of the Constitution of India did not affect pre-Constitution laws. As the Mysore Sales Tax Act, 1948, under which tax was levied on hides and skins was a pre-Constitution law, it was exempted from the requirement of the President's assent under Article 286(3) of the Constitution of India. —*ABDUL RAHMAN v. THE STATE OF MYSORE AND ANOTHER* [1957] 8 S.T.C. 205 (Mys.).

Punjab—Validity of Punjab Act XLVI of 1948 imposing tax on agricultural machinery.—Section 5 of the East Punjab General Sales Tax Act (XLVI of 1948) gave to the Provincial Government power to impose sales tax at such rates as it might by notification direct. The Amendment Act XIX of 1952 however amended this section and fixed with retrospective effect the upper limit of tax which could be levied by the Government. Prior to the passing of this Amendment Act, Central Act LII of 1952 had been enacted which declared, *inter alia*, agricultural machinery as essential to the life of the community and exempted it from the levy of sales tax. The assessee, who was assessed to sales tax on the sale of agricultural machinery, contended that Punjab Act XLVI of 1948 imposing such tax must be deemed to have been passed only after the enactment of Central Act LII of 1952 and therefore Punjab Act XLVI of 1948 was *ultra vires* the Provincial Legislature : *Held*, that the East Punjab General Sales Tax Act (XLVI of 1948) which sanctioned the imposition of sales tax had existed since 1948 and the removal of a defect in it retrospectively did not render it invalid. The Act was *intra vires* the Legislature and the levy of the tax on the assessee could not be said to be illegal merely because of the provisions of Central Act LII of 1952.—*PREM NARAIN AND COMPANY v. THE EXCISE AND TAXATION COMMISSIONER, PUNJAB, AND ANOTHER* [1957] 8 S.T.C. 1 (Punj.).

—*Notification withdrawing exemption given to certain dealers of edible oils—Whether a law*